

THE
GENUINE TRIAL
OF
Capt. JOHN PORTEOUS,

BEFORE THE

High Criminal Court,

OR THE

LORDS of JUSTICIARY,

IN

SCOTLAND;

FOR

bringing his own Piece, and ordering the Men under his Command to fire amongst the Spectators, at the Execution of ANDREW WILSON, in the *Grass-Market of Edinburgh*, the 14th of April, 1736. By which six Persons were kill'd, *viz. Charles Husband, Archibald Ballantyne, John Anderson, Alexander Macneil, Margaret Gordon, and Henry Graham:*

And eleven Persons dangerously wounded, *viz. Margaret Arthur, Jane Peat, David Wallace, James Philp, David Kidd, Patrick Spalding, James Lyle, Alexander Wallace, John Miller, David Ogilvie, and James Nicolson.*

CONTAINING

1. The Libel or Indictment of his Majesty's Solicitor-General against *Porteous*.
2. Interlocutor, or Judgment of the said Lords on the 6th July, 1736, upon it.
3. The Names of the Affize or Petit-Jury.
4. The Prisoner's judicial Confession.
5. The Information for his Majesty's Advocate, for his Highness's Interest, against Captain *Porteous*, on July 12th, 1736.
6. The Information of the Council, or Advocates for the said Captain *Porteous*, on the 13th July, 1736.
7. *N. B.* These contain the curious and learned Pleadings of Council of both sides, according to the Civil, Municipal, and Common Law of all Nations in such Cases.
8. The Depositions and Examinations of the sixteen Witnesses adduc'd by the Council for the Prisoner.
9. Verdict return'd by the aforesaid Jury, the 20th July, 1736.
10. The Sentence pronounc'd by the Lords upon the Jury's returning this Verdict.
11. The Petition of Captain *Porteous* presented to her Majesty Queen *Caroline*, Guardian of these Realms, for Mercy.
12. A full and true Account of the Mob's executing him the 7th of September, 1736. More Authentick than any yet publish'd.

THE SECOND EDITION.

L O N D O N;

Printed for T. COOPER, at the *Globe*, in *Pater-Noster Church*.
M.DCC.XXXVI. (Price 1 s. 6. d.)



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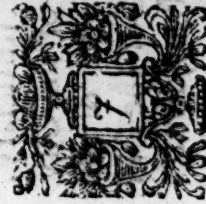
THE LONDON SOCIETY

GENERAL



T H E
T R I A L
O F
Capt. JOHN PORTEOUS.

The LIBEL, or INDICTMENT.

 OHN PORTEOUS, lately one of the Captain Lieutenants of the City-Guard of *Edinburgh*, now Prisoner within the Tolbooth of the said City, *YOU* are indicted and accused at the Instance of *Duncan Forbes*, Esq; his Majesty's Advocate for his Highness's Interest; **T H A T** **WHERE** by the Law of GOD, the common Law, the municipal Law and Practice of this Kingdom, and the Laws of all other well governed Realms, Murder and Slaughter, Maiming and Wounding with mortal Weapons, any of the Subjects of such Realms, and the ordering, commanding and causing any Band, or Number of Men, armed with Firelocks and other mortal Weapons, to fall upon, wound, murder, and destroy Numbers of his Majesty's Subjects, innocently and lawfully assembled, by firing sharp Shot amongst

amongst them, whereby Multitudes are, or may be endangered, and many Men, Women, and innocent Children are, or may be killed or wounded, without any just Cause or Occasion, and without lawful Warrant; more especially, when committed in the publick Streets of a City, by a Person lawfully commissioned by the Magistrates thereof, to command such Band of armed Men, for the Preservation of Peace and Order, and for the Defence of the Inhabitants, and others resorting thereto, are Crimes of a high Nature, and severely punishable; YET TRUE IT IS, and of Verity, That you the said *John Porteous*, have presumed to commit, and are guilty and accessory, or Art and Part of all and every, or one or other of the foresaid Crimes aggravated as aforesaid: IN SO FAR AS, upon the Fourteenth Day of *April* last, or one or other of the Days of the said Month, when the deceas'd *Andrew Wilson*, sentenced to be hang'd to Death by the High Court of Justiciary, was to be executed at the *Grass-Market* of the City of *Edinburgh*, you being at that time one of the Captain-Lieutenants of the Town-Guard of the said City, lawfully commissioned by the Magistrates and Town-Council thereof; and in the ordinary Course of Rotation, with the other Officers of the said Guard, being ordered to attend at the said Execution, to preserve the Peace, and support the Executioner in the Discharge of his Duty, having under your Command a Detachment of about seventy Men, you did then attend in the said *Grass-market* accordingly; and after the said *Andrew Wilson* had hung upon the Gallows erected for his Execution, until he was dead, at least for a considerable Time, and so long as there was Ground to conclude he was dead; YOU shaming off all Fear of GOD, and Respect to his Majesty's Laws, and conceiving a most wicked and

and malicious Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects, and the Inhabitants of the said City of *Edinburgb*, and others there assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment of the Guard, under your Command, to fire upon the People so assembled at the said Execution. And the Men, at least severals of them, having fired, as it seems you apprehended, over the Heads of the Multitude, so as to avoid doing them harm; you with Threats and Imprecations repeated your Commands to fire, calling out to them, *to level their Pieces and be damn'd*, or Words to that purpose; and at or about the same time, you levelled the Firelock that was in your own Hand, taking aim at *Charles Husband*, Servant to *Paul Husband*, Confectioner in the Abbey of *Holy-rood-house*, and most wickedly and murderously fired at him, whereupon he immediately dropped to the Ground, having received a Wound by a Bullet, or large Drop of Lead, on the left Side of his Head, which pierced into his Brain, and another large Wound likewise by a Bullet, or large Drop of Lead, on the left Side of his Neck; and a third Wound in his Body, and a fourth Wound in his left Hand, at least a mortal Wound or Wounds, whereof he died in some short Space thereafter: AT LEAST, you did so level your Piece, and appeared to take your Aim at some one of the innocent Multitude, who happened to stand directly over-against you, and you did fire, and upon your so firing, the said *Charles Husband*, at least one or other of the Persons particularly after mentioned, or more of them, did immediately drop to the Ground, having received a mortal Wound or Wounds, whereof they soon after died. And by your said Example and Command, severals of the said Guard, to the Number

bet of twenty, less or more, did at the same time
 with you, or soon after you, fire upon the innocent
 Multitude; whereby all, or one or more of the fol-
 lowing Persons reciev'd mortal Wounds, whereof
 they soon after died, viz. *Archibald Ballantyne*, Son
 to *John Ballantyne* younger, Dyster in *Dalkeith*,
 received several Wounds, with Bullets or large
 Drops of Lead, which pierced into his Body, at
 least a mortal Wound or Wounds in his Head or
 Body, whereof he died a few Days thereafter.
 AND *John Anderson*, Son to *George Anderson* in
Craighead, Drover, received a Wound in the Head
 with a Bullet or large Drop of Lead, at least a
 mortal Wound or Wounds in his Head or Body,
 so that he died in few Hours thereafter. AND the
 following Persons were grievously maimed, hurt,
 and wounded, to the great Danger of their Lives,
 viz. *Margaret Arthur* alias *Airth*, Residenter in
 the *Canongate*; near the *Water-gate* thereof; *Jean*
Peat Servant to *James M'Douall* Merchant in *E-*
dinburgh, *David Wallace* Journeyman Wright in
Edinburgh, *James Philp* late Servant to
Lauder Esq; Residenter in the *Canongate*, *David*
Kidd Taylor in *Edinburgh*, *Patrick Spalding* Ap-
 prentice to *David Mitchel* Jeweller in *Edinburgh*,
James Lyle, and *Alexander Wallace*, both Servants
 to *James Wright* Staymaker in *Edinburgh*, *John*
Miller Taylor in *Edinburgh*, *David Ogilvie* Writer
 in *Edinburgh*, and *James Nivon* late Servant to
William Sellars Writer in *Edinburgh*, Residenter in
 the *Potterrow*. AT LEAST, the said Persons
 were so killed, wounded, and maimed, by the fi-
 ring in manner, and by the direction as aforesaid,
 and by the second Firing after mentioned: for not
 contented with the Barbarities thus committed, af-
 ter you had, with the said Company or Detachment
 of the City-Guard, marched towards, or into the
 Place or Street called the *West-Bow*, you without
 just

just Cause or Occasion, again ordered the Men under your Command, to face about and fire upon the People; and at or about the same time, you fired a Musket or Firelock that was in your own Hand, having either re-loaded, or caused to be re-loaded your own Piece, or taken another out of the Hand of one of the Guard; and severals of the said Guard did, upon that second Example and Command of yours, fire upon the Multitude, whereby *Alexander M'Neil*, Son to *Edward M'Neil* Indweller in *Mortonball*, received a Shot in the Head, with a Bullet or Lead Drop, which pierced into his Brain, at least, a mortal Wound or Wounds in his Head or Body, so that he died thereof in a few Days thereafter; and *Margaret Gordon*, Servant to *William Ogilvie* Taylor in St. *Mary-Wynd* in *Edinburgh*, received a Wound in the Head above her left Eye, with a Bullet or large Drop of Lead, which pierced into her Brain, at least a mortal Wound or Wounds in her Head or Body, so that she died thereof in a short Space thereafter; and *Henry Graham* Taylor in *Canongate*, received a Wound in the Head, with a Bullet or large Drop of Lead, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, of which he died in a few Hours thereafter: AT LEAST, by this, and the other Firings by you, and by your Order and Example above mentioned, all, or one or more of the Persons particularly above recited, as having been killed, received mortal Wounds, of which they soon after died, and all, or one or more of the Persons above recited to have been wounded, were grievously maimed, hurt, and wounded, to the great Danger of their Lives: AT LEAST, at the Time and Place aforesaid, the said Persons above named and mentioned, to have been respectively killed and wounded, were all, or one or more of them, wickedly and

and maliciously slaughtered, murdered and wounded, by Wounds severally given them by mortal Weapons. AND YOU ARE GUILTY, Art and Part, of the Slaughter, Murder, and wounding of all, or one or more of them. ALL WHICH, or any Part thereof being found proven by the Verdict of an Assize, in presence of the Lord Justice General, Justice Clerk, and Commissioners of Justiciary, you ought to be most exemplarily punished with the Pains of Law, to the Terror of others to commit the like in Time coming.

CH. ARESKINE, A. D.

Interlocutor of Relevancy pronounced by the said Lords, upon the 6th of July 1736.

“ THE Lord Justice-Clerk, and Lords
 “ Commissioners of Justiciary, having considered the Indictment, pursued at the Instance
 “ of *Duncan Forbes Esq;* His Majesty’s Advocate,
 “ for His Highness’s Interest, against *John Porteous Pannel, Fand*, That the Pannel having, at
 “ any of the Times and Places libelled, fired a
 “ Gun among the People assembled at the Execution libelled, or having given Orders to the
 “ Soldiers, under his Command, to fire, and
 “ thereupon they, the Soldiers, or any of them,
 “ having accordingly fired; and, upon the Firing, either by himself or them, the Persons,
 “ mentioned in the Indictment, or any of them,
 “ were killed or wounded; or the Pannel’s being
 “ Art and Part of any of the foresaid Crimes, are,
 “ *separatim*, relevant to infer the Pains of Law:
 “ But allowed the Pannel to adduce what Evidence
 “ he

" he could, with respect to his Behaviour at the
 " Time the foresaid Crimes are libelled to have
 " been committed, for taking off the Circumstan-
 " ces which should be brought for inferring his be-
 " ing guilty, or Art and Part of the Crimes libel-
 " led; and remitted the Pannel, and the Indict-
 " ment as found relevant, to the Knowledge of an
 " Assize."

Names of the Assize, or PETIT-JURY,
stand as follow.

SIR *John Inglis of Cramond,*
Alexander Gibson of Pentland,
George Haliburton of Fordel,
James Baird of Chesterhall,
John Hogg of Cammo,
Thomas Dundas of Letbem,
Alexander Brand of Brandfield,
John Jollie Vintner in Edinburgh,
James Hunter Wright there,
William Wight Baxter there,
John Bell Brewer there,
James Davidson Bookseller there,
David Inglis Merchant there,
Alexander Sharp Merchant there,
Patrick Manderston Merchant there,

The Pannel's judicial Confession.

THE Pannel *John Porteous* judicially confessed,
 That, Time and Place libelled, the several
 Persons mentioned in the Indictment to have been
 killed and wounded, viz. *Archibald Ballantine*, Son
 to *John Ballantine* younger; *Dyfter in Dalkeith*;
Margaret Arbur, alias *Airb*, Resdenter in the

Canongate, near the Water-gate thereof; John Anderson, Son to George Anderson in Craighoad, Drover; Jean Peal, Servant to James Mac Dugal, Merchant in Edinburgh; David Wallace, Journeyman Wright in Edinburgh; James Phipp, late Servant to John Lauder, Esq; Residenter in the Canongate; David Kidd, Taylor in Edinburgh; Patrick Spaldane, Apprentice to David Mitchell, Jeweller in Edinburgh; James Lyal and Alexander Wallace, both Servants to James Wright, Stay-maker in Edinburgh; John Miller, Taylor in Edinburgh; David Ogilvie, Writer in Edinburgh; and James Nevin, late Servant to William Sellers, Writer in Edinburgh, now Residenter in the Potter-row; Alexander Mac Neil, Son to David Mac Neil, Indweller in Mortonball; Margaret Gordon, Servant to William Ogilvie, Taylor in St. Mary-Wynd in Edinburgh; Henry Grabam, Taylor in the Canongate-head; and Charles Husband, Servant to Paul Husband, Confessioner in the Abbey of Holy-rood-house; were so killed or wounded, by Firing proceeding from the Party of the City Guard then under his Command, as mentioned in the Indictment.

His Majesty's Advocate, for proving his Libel, adduced upon 19th July, 1736, the Witnesses after deponing.

Witness I. James Drummond, Merchant, and Residenter in Edinburgh, aged 30 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deposed, That Time and Place libelled, and after Andrew Wilson, had hung some time upon the Gallows, about a Quarter of an Hour, as the Deponent thinks, he saw the Executioner going up the Ladder, as the Deponent apprehended, to cut him down;

(11)

down; upon which, he saw some small Stones thrown by the Mob at the Executioner, some whereof, the Deponent believes, might have fallen upon the Guard. Upon which, he saw the Pannel advance from the Guard westward, resting his Firelock upon his Thigh, as if he had been bending it, and there- after saw him raise it to his Brest, moving it from one Point to another; and soon thereafter, the Deponent heard a Shot from the Place where the Pannel was standing, but did not observe whether the Shot came from Captain *Porteous's* Firelock. And, much about the same time, observed one of the Soldiers go out of his Rank west-ward, and upon the north side of Captain *Porteous*, and saw him go further west than the Place where Captain *Porteous* was; the side of the Window, where the Deponent was standing in *Robertson's* House, covered the said Soldier from the view of the Deponent, by the time the first Shot was fired; and which Soldier had a Gun and a sciewed Bayonet in his hand, levelled, with the Butt-end of it at his Brest: And the Deponent did apprehend, at the time, that Captain *Porteous* had fired, because he saw him in a firing Posture; and immediately heard a Shot, and saw a Man, in a few Minutes thereafter, as soon as the Mob dispersed, lying upon the Street, upon a Line whither the Deponent saw Captain *Porteous's* Piece directed, and that the above-named Soldier came from the Body of the Guard, which was behind Captain *Porteous*. *Causa scientie patet.* And this was Truth, as he should answer to GOD.

Wit. II. Sir *William Forbes*, Advocate, aged 30 Years, of thereby, married, solemnly sworn, purged of Malice, parrtrial Counsel, examined and interrogate, deposed, That, Time and Place libelled, and after the deceas'd *Andrew Wilson* had hung about 20 or 25 Minutes upon the Gallows, the Deponent, from

from a Window in Orr the Stabler's House, opposite, but a little to the westward of the Gallows, saw the Executioner go up some Steps of the Ladder, as the Deponent believed, to cut down the said Deceased, and saw thereupon Stones thrown at the Executioner. Upon which the Executioner immediately retired to the Guard, and the Mob continued throwing of Stones, so that the Deponent does believe, some of the Stones might have touched the Guard; and about this time, the Guard were drawing together, to the North and West of the Gallows, where the Captain was standing, and did soon thereafter see the Pannel advancing westward, fire his Gun among the People assembled at the Execution, and observed the Fire and Smoke issuing out at the Muzzle of his Piece, to the best of the Deponent's Observation, which he thought at the time very distinct, and that the said Shot was the first which the Deponent heard; and the Deponent at the time did imagine, that the Pannel had fired his Shot high, but whether that proceeded from the Situation that his Firelock was in, or from the Appearance that the Fire and Smoke made, that issued out of his Piece, the Deponent could not particularly charge his Memory. That thereafter, the Deponent heard several dropping Shots, about 20, but cannot be positive as to the Number. That when the fore said Facts hapned, the Deponent was upon the south side of the Street, and the Pannel to the north of the Middle of the Street, almost opposite to the Window where the Deponent was; and when the Pannel so fired, the Deponent did not observe any Soldiers so far advanced westward from the Body of the Guard as the Pannel was. *Causa scientia patet.* And this was the Truth, as he should answer to G O D.

Wit.

Wit. III. Mr. *William Fraser*, Son to the Lord *Salton*, aged 24. Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was in a Window in one *Orr's* House, in the *Grass-market*, the south side of the Street, that Day that *Andrew Wilson* was execute; that after *Wilson* had hung some time on the Gallows, he saw the Executioner go up some Steps of the Ladder, as he apprehended, to cut him down; and then saw the Mob throw Stones and Dirt at him, upon which the Hangman came down, and went in amongst the Soldiers that were standing at the foot of the Scaffold: That soon after the Hangman had come down, he saw the Pannel present, and level his Gun, moving the Muzzle to and fro, and then saw him fire, and, to the best of his Knowledge or Apprehension, saw the Smoke issue out of the Mouth of the Piece; that immediately thereafter, within a Second or two, he heard several dropping Shots fired by the Soldiers, who were there on their Arms; that he thought the dropping Shots he then heard, came from near the Place where the Pannel was standing. And *deponed*, That, at the Time foresaid, the Pannel fired his Gun, he did not observe any of the Soldiers advance before him, and present their Guns. *Causa scientiæ patet*. And this was Truth, as he should answer to G O D.

Wit. IV. Mr. *William Urquhart of Meldrum*, aged 38 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was present at *Andrew Wilson's* Execution, the Time libelled, in the House of one *Orr*, on the south side of the Street, in company with Sir *William Forbes* and Mr. *Fraser*, the preceding Witnesses; That after *Wilson* had hung some time, he saw the Executioner go up

up some Steps of the Ladder, in order to cut him down, as he apprehended, and saw the Mob throw several Stones at him, upon which he came down; thereafter the Mob continued to throw Stones, some of which fell among the Guard; whereupon he heard several dropping Shots fired by the Soldiers. That he saw the Pannel present his Piece, immediately heard a Shot, which he apprehended was shot by the Pannel; but did not observe it so narrowly, as to see the Smoke or Fire issue out of his Piece. *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

Wit. V. *James Dewar of Vogrie*, aged 64 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, Time and Place libelled, at *Andrew Wilson's* Execution, he was in a Window in his own House, at the Foot of the *West-bow*, on the East-side of the Way, that he saw the Hangman go up some Steps of the Ladder, after *Wilson* had hung some time, and saw the Mob throw some Stones, one of which hit the Executioner on the Face, upon which he came down the Ladder; whereupon he saw the Pannel present his Piece and fire, which was the first Shot he heard or saw: That when he saw the Pannel fire, his Side was to the Deponent, and that the Pannel was then standing on the East-side of the Gibbet, and that he fired his Piece to the West, and deponed he saw the Fire of the Powder from the Pan, and heard the Report of the Shot. Deponed, That when the Pannel fired, as aforesaid, he was standing on the South-east Side of the Scaffold. Deponed, That *Wilson* was cut down, not by the Hangman, but by some that were standing at the Foot of the Gallows; and that *Wilson* was cut down before he heard any Shots. Deponed, That he stood at his

own Window, before *Wilson* was thrown over, and continued looking at the Place of Execution, till he was cut down, and heard the Shots, as before-mentioned. And being interrogate, what kind of Clothes *Capt. Porteous* had then on, declared he could not be positive, but believes they were red Clothes; but is positive that he knew *Capt. Porteous's* Face, when he saw him fire. *Causa scienitiæ patet.* And this was Truth, as he shall answer to GOD.

WIT. VI. *George Drummond*, Esq; one of the Commissioners of the Customs, aged Years; or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deposed, That, at the Time and Place libelled, the Deponent was in the House of Bailie *Haliburton*, on the right Hand on the North-side of the Corner of the strait Bow, the third Story; at the time of the Execution of *Andrew Wilson*; and, from a Window of the said House, after the Criminal was thrown over, and had hung for 15 or 16 Minutes, the Executioner was about going up the Ladder, and after he went up two or three Steps, he observed several Stones thrown at him, which made him return; and while he was on the Ground, he observed his Nose bleeding; and, at this time, he observed one or two Persons, or more, standing at the Foot of the Gallows, one of whom, stretching up his Arm with a Knife, he observed, cut the Rope, the Executioner having mixed with the Soldiers. He did observe the throwing of Stones to continue, and some of them fell amongst the Soldiers, Deposed, That, immediately thereafter, he observed one of the Soldiers advance a little before *Mr. Porteous*, to the Westward, with a Gun in his Hand, which he presented, and immediately thereupon the Deponent heard a Shot, which he imagined to be from that Soldier; but did not observe

observe Fire or Smoke, tho', at the time, he concluded it was from that Soldier's Gun, and is positive, That that was the first Shot that was fired; and the Deponent did not think that the Stones that were thrown did give any just Cause for the firing. *Deponed*, That, about the time, when he observed the Soldier present his Gun, as said is, he also observed the Pannel holding his Gun in his Hand in a Level; but is not sure of his putting the Butt of it to his Shoulder. *Deponed*, That after the said first Shot, within a Minute he heard another, and so it continued till about the Number of 18 or 20; and this was at the time of the Firing observed by the Deponent; but, within some Minutes thereafter, there was a second Firing, which he did hear, and, upon hearing, came to the Window, and observed some Lime fall from an opposite House, which he judged to have been occasioned by the Bullets; and as to the 18 or 20 dropping Shots in the first Firing, they were from the Soldiers immediately behind the Pannel, betwixt whom and them he observed no Person interposed: And he observed, the time of the first Shot, the Pannel's Face was looking westward, as was all the Soldiers behind him. *Deponed*, That the Soldiers, at that time who fired, were, to the Deponent's best Remembrance, to the Northward of the Scaffold; and the Pannel was then, to the best of his Remembrance, either upon a Line to the Gibbet, or a little Westward of it. Farther *deponed*, That the Soldier who first fired, as said is, advanced from behind the Pannel, and past upon his Right-hand to the Northward of him. *Causa Scientie patet*. And this was Truth, as he should answer to GOD.

Wit. VII. *William Johnston* Druggist in *Edinburgh*, aged 40 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, exa-

examined and interrogate, *deponed*, Time and Place libelled, he, the Deponent, being present at the Execution of *Andrew Wilson*, did observe the Pannel take a Gun out of a Soldier's Hand, at which Time he was standing 'twixt the *Corn-Market* and one *Tod's* Shop, which is under Bailie *Hiburnton's* House, thereupon he observed the Pannel advance some Steps Westward, and did see him present and level his Gun; *that is to say*, hold it out and fire amongst the Multitude, and did observe the Smoke come out of the Gun: And *deponed*, That this was the first Shot he heard; which Shot immediately followed after the Criminal was cut down by a Hand standing at the Foot of the *Gibbet*; and the Deponent, at the time, was standing in a Window in the House of one *Gardiner Horferrier*, by the *Muse-well*; and when the Pannel was taking the Gun out of the Soldier's Hand, he appeared to be in a Passion; and it was some short time before he was Master of the Gun: *Deponed*, That, to the best of his Remembrance, the Pannel was cloathed in red; but he being well acquainted with the Pannel's Face, he is positive that he was the Person that took the Gun, and fired, as aforesaid; and *deponed*, That, he believes, there was about 30 Yards Distance betwixt the Window where the Deponent was, and the Pannel, at the time of the first Firing. *Causa Scientiæ palet*. And this was Truth, as he should answer to GOD,

Wit. VIII. *Mark Sprot Skinner*, and one of the Constables of *Edinburgh*, aged 28 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, as he stood in *William Orr* Stabler's Window, South-side of the *Grass-Market*, he saw *Wilson* the Criminal cut down from the

the Gibbet ; upon which Occasion he did not observe that there was any greater Disturbance than usual at Executions : That, a very little while after the Criminal was so cut down, he observed the Pannel advance before the Soldiers ; and, upon the North-side of the Scaffold, over-against the Gibbet, he saw him fire his Piece towards the West, and the Smoke issue out of the Mouth of his Gun ; this, he says, was the first Shot that was fired ; but immediately, upon the back of that, a tall Man, with his own Hair, about the third behind the Pannel, as he thinks, fired off his Piece likewise towards the West, but up in the Air, over the Heads of the Multitude ; that, very soon after, several other dropping Shots followed : after which, when the People fell back and opened, he observed a young Man lying upon the Ground as dead, directly opposite to the Place where the Pannel fired. *Causa Scientiæ patet.* And this was the Truth, as he should answer to GOD.

Wit. IX. *George Campbell Wright in Edinburgh,* aged 28 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogated, *deponed*, That, Time and Place libelled, the Deponent stood in the Window of Mr. *Carmichael's* House in the South-side of the *Grass-Market*, directly opposite to the Gibbet ; that a very little after *Wilson* was cut down, he observed the Pannel, with four or five of his Men about him, and that as he pointed his Piece to and fro towards the Multitude, he observed him receive a Stroke by a Stone thrown from behind the Scaffold, off which it rebounded, and struck him ; upon which he immediately fired his Piece : but whether this was the first Shot or not, the Deponent could not tell, for there was three or four fir'd much

much about the same time; but that the Pannel fir'd he is sure, for he saw Fire and Smoke issue from his Piece. That, upon these Shots already mentioned, he saw a Man fall down upon his Back on the Street; That, after this, he saw the Pannel raise his Musket, and put his Hand to his Cartridge Box, as if he intended to load again; but does not know what followed upon this, because he immediately lost sight of him. *Deponed*, That when the Pannel fired his Piece, as above, he was standing towards the South-east Corner of the Scaffold, and pointed his Piece towards the South-west; that the Pannel's Fire, with the Shots that went off at the same time, were the first that were made on that occasion. *Causa Scienitiæ patet*. And this was the Truth, as he should answer to GOD.

Wit. X. *James Bald* Merchant in *Edinburgb*, aged 32 Years, or thereby, Widower, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, the Deponent stood in the same Window with the immediate preceeding Witness, or, at least, in a Window in the same Room: That, a little after *Wilson* was cut down from the Gibbet, he saw the Pannel advance a little Westward from the *Corn-Market*, towards the South-side of the Gibbet, and fire off his Piece, Westward, towards the *Muse-Well*: That, at this time, he saw none of the Soldiers near him, nor observed any other Fire but his; and before there was any more Firing, when the Multitude fell back, he saw a Man lying dead towards the Place that the Pannel pointed his Piece; that he is sure the Pannel fired, since he saw the Fire and Smoke

issue from his Piece. *Causa Scientiæ patet.* And this was Truth, as he should answer to GOD.

Wit. XI. *Andrew Daw*, Servant to *James Montgomerie* Brewer in the *Potter-row*, aged 24 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, the Deponent was standing at the Foot of *Robertson* the Stabler's Clofs, when *Wilson* was cut down from the Gibbet; immediately after which, the Pannel, who was standing in the middle of the Street, between the Deponent and the *Corn-market*, fired his Piece towards the Place where the Deponent was standing; upon which, a *Baxter* in the *Abbey*, called *Charles Husband*, dropt just by the Deponent, and his, the Deponent's Coat, was torn in the Shoulder with the same Shot: That he heard the Report of the Captain's Piece, tho' he neither saw the Fire nor the Smoke; yet he is sure the Pannel fired, because he saw no other Piece pretended at the same time. That the Pannel, when he fired, as above, was as near to the Deponent, as the End of the Table, where he now stands, is to the West End of this Room. *Deponed*, That the Shot, mentioned to be made by the Pannel, was the first he heard that Day. *Deponed*, That, during the whole time of the Execution, he never came nearer the Scaffold than *Robertson's* Clofs-Foot; by *Robertson's* Clofs-Foot, is meant the End nearest the *Grass-market*. *Causa scientiæ patet.* And this was Truth, as he should answer to GOD; and declared he could not write.

Wit. XII. *Walter Shergold*, Indweller in *Edinburgh*, aged 28 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined

examined and interrogate, *deponed*, That he was present the Time and Place libelled; and after the Criminal *Wilson* was cut down, he saw Captain *Porteous* fire his Gun, holding the same straight out at the Multitude; and that the Deponent was then within three Yards of the Captain, when he saw him fire; and that after he had fired, he heard him call, *Fire*, then heard some Shots: but he does not know from what Hand they came; for he immediately retired to the *Lawn-market*. *Deponed*, That when the Pannel fired, his left Hand was towards the Scaffold, and he fired towards the *West-part*. *Deponed*, That the Scaffold was nearer to the *West-port*, than the Pannel was when he fired; that is, the Pannel was nearer to the *Corn-market*. *Deponed*, That this Shot, by the Pannel, was the first that he heard at that time, and that he was present all the while of the Execution; that he was so near, as to see the Fire and the Colfin fly out of the Pannel's Gun. *Causa scientie patet*. And this was Truth, as he should answer to GOD.

Wit. XIII. *John Richie*, Servant to Mr. *Archibald Murray* Advocate, aged 17 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, the Time and Place libelled, the Deponent was present at the Execution of *Andrew Wilson*; and after the Criminal was cut down, he saw and heard about three Shots fired; and then he heard a fourth Shot, which was by Captain *Porteous*, and that he saw a Man fall down, But the Deponent imagined, it was from the Pressure of the Croud, that there was very short time betwixt the Shots; but that, which was by Capt. *Porteous*, was last in Order. That after the Criminal was cut down, the Guard drew towards the North-side

North-side of the Scaffold; that the Deponent was standing within two or three Yards of the Foot of *Robertson's* Closs, when he saw and heard the Firing. *Deponed*, He heard the Pannel mention the word *Fire*, before the Firing. *Deponed*, That the Pannel was, to the best of the Deponent's Remembrance, standing as far West as the Gallows; but he cannot be very positive, the Mob and Croud were such, that he could not very distinctly discern. *Deponed*, That the Shots, mentioned by the Deponent, first three, and then a fourth, was the first he heard that time. *Causa scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. XIV. *Thomas Cruikshanks*, Servant to *Thomas Trotter*, Brewer, in *Edinburgh*, aged 22 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, the Deponent, being upon the Causey, on the South-side of the Scaffold, saw the Pannel, who was then standing upon the North side of the Scaffold, fire the Gun, that was in his Hand, upon the Multitude, the Point of the Piece being directed Westward, and saw the Fire and Smoke issue out of the Muzzle of the Gun that was in the Pannel's Hand. And further *deponed*, That the Pannel was standing at the North-side of the Scaffold, and at that End of it which is next the *Bow*: And being interrogate, if the said Shot, that the Pannel fired, was the first Shot, *deponed*, That it was the first Shot; but that several other Shots followed immediately thereafter. *Causa scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit.

Wit. XV. *James Neilson*, Gardener in the Bull Clofs of *Edinburgh*, aged 31 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, Time and Place libelled, the Deponent being standing within the Foot of a Turnpike, near the *Muscowell*, saw the Pannel, who was then standing upon the North-side of the Scaffold, a little to the eastward where the Gallows was, and saw the Pannel advance westward, towards the Multitude, with his Firelock in his hand, moving it to and again, as if he had been beating back the People; and at the third or fourth Motion, saw the Pannel fire the Piece that was in his hand, upon the Multitude, pointing it westward, and saw the Smoke issue out at the Muzzle of the said Piece: That this was the first Shot which the Deponent heard, which was soon followed by others; for the Deponent observed the Pannel, after he had fired his Piece, retire some Yards to the Soldiers, and saw five or six of those Soldiers advance, and fire upon the Multitude; and soon thereafter, when the Multitude were beat off, the Deponent saw a Boy with black Hair, lying within 10 Yards of the Turnpike where the Deponent was standing, and saw four other Persons lying at different Places upon the Street, and saw the first mentioned Boy bleeding at the Ear. *Causa scientiæ patet.* And this was Truth, as he should answer to
G O D.

Wit. XVI. *William Gordon*, Baxter, and Servant in the common Bake-house in *Hastie's Clofs* in *Edinburgh*, aged 21 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, the Time and Place libelled, the Deponent, being at the

the head of the Turnpike at the back of the *Muscowell*, did from thence see Captain *Porteous Pannel*, who was then upon the north-west corner of the Gibbet, waved his Firelock to and again, and thereafter saw the said Firelock, while in his hand, go off, and saw the Fire and Smoke go out at the Muzzle of it, and that this was the first Shot which the Deponent heard that Day; but heard several Shots thereafter; and that the Shot which the Pannel fired, was soon after the deceased *Andrew Wilson* was cut down. *Causa scientiæ patet*. And this is the Truth, as he should answer to GOD.

Wit. XVII. *James Naysmith*, Servant to *Colin Alison*, Wright in *Edinburgh*, aged 26 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, Time and Place libelled, and soon after the deceased *Andrew Wilson* was cut down from the Gibbet, the Deponent being upon the Causey of the north-east end of the Scaffold, beginning to take down the Scaffold, and did then hear the Pannel, who was towards the north end of the Scaffold, say several times to the Soldiers under his Command, *Fire, and be damn'd*; and at the same time saw the Pannel advancing west-ward, with his Piece presented in his hand. And immediately after hearing the foresaid Words, he heard several Shots go off; and when the foresaid Words were spoken by the Pannel, he was passing by the Deponent westward, about a Yard or two distant from him. *Causa scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. XVIII. *David Brown*, Servant to *Colin Alison*, Wright in *Edinburgh*, aged 28 Years, or thereby, unmarried, solemnly sworn, purged of Malice,

Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, and after the deceased *Andrew Wilson* was cut down from the Gibbet, the Deponent then being standing on the east end of the Scaffold, assisting to pull it down, and then saw the Pannel going along on the north side of the Scaffold westward, and heard him give Orders to the Soldiers under his Command, *to fire*, but does not remember the particular Expression: and immediately upon the Orders being given, as aforesaid, he heard several Shots, and when the Deponent heard the Pannel give the foresaid Orders, he was about the Distance of the Breadth of the Scaffold from him. *Causa Scientia patet*. And this was Truth, as he should answer to GOD.

Wit. XIX. *Matthew Reid*, Servant to *Thomas Miln*, Deacon of the Masons in *Edinburgh*, aged 33 Years, or thereby, married; solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, Time and Place libelled, and soon after the deceased *Andrew Wilson* was cut down from the Gibbet, the Deponent being standing upon the plain Stones near Captain *Tod's* Shop, he saw the Pannel going from the Well at the *Bow-foot* westward, and saw him fire the Gun that was in his hand, and thereafter give Orders to the Soldiers under his Command to fire; thereafter heard him call to the Soldiers to level their Pieces, and saw the said Soldiers fire: And that the Shot fired by the Pannel, as aforesaid, was either the first or second Shot, which Shot he fired standing to the north-east of the Scaffold, half way 'twixt that and the *Bow-foot* Well; and that when the Pannel ordered the Soldiers to level their Pieces, he was some Yards nearer the Foot of the *Bow*. *Causa Scientia patet*. And this was Truth, as he should answer to GOD.

D

Wit.

Wit. XX. *James Maxwell*, Servant to *Colin Alison*, Wright in *Edinburgh*, aged 32 Years, or there-by, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, the Time and Place libelled, after *Wilson* was cut down, and put in his Coffin, there was some Stones thrown by the Mob amongst the Guard, upon which he heard the Pannel order the Soldiers to turn in, and immediately heard him give the Soldiers Orders to fire, and be damn'd; and then saw him advance two or three Paces, and saw his Gun cock'd, and his Thumb upon the Dog-head, and saw him fire the Gun; and immediately, before he heard any other Shots, he saw a Boy fall, near a Copper-smith's Shop, to the north-west of the Place from which the Pannel fired his Gun; there were six or seven more Shots after the Orders were given, and then he saw three Men and a Woman fall, one of which had a Wound in his Forehead, and another on the side of his Head. That after the Soldiers fired, as aforesaid, he heard the Pannel say to one of the Soldiers, That if he did not fire, he would take his Piece from him. *Deponed*, That he the Deponent was then standing on the south side of the Scaffold, helping to pull it down, when he heard and saw what is above deponed upon; and that the Pannel was upon the north side of the Scaffold, about ten Yards from it, over-against the middle of the Scaffold; and *deponed*, That the Pannel's Shot at that time, was the first he heard then shot. *Deponed*, That he was present all the time, from *Wilson's* coming down to his Execution, 'till after he was cut down and carried away, during which time he heard no Shot fired, until that fired by the Pannel. *Causa scientie patet*. And this was Truth, as he should answer to GOD.

Wit.

Wit. XXI. *William Douglass*, one of the Soldiers of the City Guard of *Edinburgh*, aged 47 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, The Time and Place libelled, as the Executioner was going up the Ladder to cut down *Wilson*, there were several Stones thrown at him, which obliged him to come down the Ladder; at the same time there were several Stones thrown amongst the Guard, before *Wilson* was cut down; at which time he heard the Pannel say to the Soldiers, *Be damn'd to you Bougars, fire*; after which he heard several Shots fired by the Men: but knows nothing of the Pannel's having fired; and that these were the first Shots he heard fired that Day, to the best of his Knowledge. *Deponed*, That the Pannel, when he uttered the Words before mentioned, was standing at the South-side of the Gallows. *Deponed*, That the first Shots were fired before *Wilson* was cut down, and likewise some of them thereafter. *Causa Scientia patet*. And this was Truth, as he should answer to GQD; and declared he could not write.

Wit. XXII. *Archibald Yetts*, Litter in the *Abbay of Holy-rood-house*, aged 48 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, the Time and Place libelled, a little after *Wilson* was cut down from the Gallows, he saw the Pannel fire his Piece among the Multitude, and immediately heard him say to his Men, *Level your Pieces, and fire, and be damn'd*; whereupon there was a great many Shots fired by them; and saw the Pannel take a Gun from one of the Men, which he, the Pannel, fired. *Deponed*, That he, the Deponent, was within six Yards of the Pannel when

he fired, and spoke the Words before mentioned. *Deponed*, That, at the time when the Pannel took the Gun from the Soldier, he laid his own upon the Scaffold, and that there were some Persons, but very few, then standing upon the Scaffold. *Depo- ned*, That betwixt the time that the Pannel fired his own Piece, and his taking the Gun from the Soldier, as aforesaid, it might be about eight or nine Minutes. And *deponed*, That at the time he fired the second Gun, there were several other Guns fired at the same time. *Deponed*, That there was no Shot fired, before the first Fire by the Pannel, and that the second Shot, fired by the Pannel, was near the same Place where he fired the first, and that he moved not above six or seven Yards betwixt the first Firing and the second; and that some of the Soldiers followed the Pannel in that space, and returned with him again to the Place where he fired first. *Causa Scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. XXIII. *William Murray*, Barrow-man, and Indweller in *Edinburgh*, aged 27 Years, or thereby, married, solemnly sworn, purged of Mallice, partial Counsel, examined and interrogate, *deponed*, Time and Place libelled, the Deponent being present at the Execution of *Andrew Wilson*, he did observe two of the Soldiers under the Pannel's Command, fire their Guns; but the Guns were fired up in the Air. Thereafter, he observed the Pannel fire his Gun amongst the Multitude; whereupon he observed a Boy drop down, and did hear the Pannel call out to the Soldiers, *Damn them for Rogues, why did they not fire even forward, and clear the Street?* At which time the Deponent was standing about the South-Pillar of the *Corn-Market*, about twenty Yards distance from the Pannel, as he apprehended. Farther *deponed*, That,

That, after the said first firing, he observed the Pannel take a Gun out of a Soldier's Hand, and fire again, directing it toward a Man he was pursuing, which he did thirty or forty Yards; and, upon firing, he observed the Person, so pursued, fall down. And being interrogate, how long his present Dulness of hearing remain'd with him? *deponed*, he has been as dull of hearing these seven Years past. *Deponed*, That the two Shots, from the two Soldiers, were the first firing he heard upon that occasion. *Causa Scientiæ patet*. And this was the Truth, as he should answer to GOD.

Wit. XXIV. *James Nicol* Watchmaker in *Cannongate*, aged 36 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was present, Time and Place libelled, at the Execution of *Andrew Wilson*, and then he did observe the Pannel fire his Gun, holding it out straight before him, amongst the Multitude there assembled; and, as he heard the Report of the Gun, so he observed the Smoke of the Powder coming from the Gun; and this Shot was the first he heard upon that occasion: and the Pannel, when he thus fired, was standing 'twixt the Gibbet and one Mr. *Cunningham's* Shop, on the North-side of the Street, near the North-east End of the Scaffold. *Causa Scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. XXV. *William Jamieson*, Merchant in *Edinburgh*, aged 24 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was present, Time and Place libelled, at the Execution of *Andrew Wilson*; and, about the time when they were cutting down the Criminal, the
Depon-

Deponent, then standing within three or four Yards of the Pannel, did hear him give Orders to the Soldiers, that were behind him, to fire; and immediately thereafter, he did hear the Pannel fire the Gun that was in his own Hand; and, upon his firing, observed the Smoke of the Powder come from it; thereafter he observed the Pannel take a Gun from one of the Soldiers, but what use he made thereof, he knows not; and it was very short time 'twixt the Pannel's firing, and his taking the Gun from the Soldier; as also a very short Distance 'twixt the Place where he fired, and where he took the said Gun; the Place of his firing, to the Deponent's Memory, being near to *Robertson's Clofs-Head*; and where he took the Gun, was a very little way up the Street from it; and the Shot he heard from the Pannel's Gun, was the first he heard that Day. *Causa scientiæ patet.* And this was Truth, as he shall answer to GOD.

Wit. XXVI. *John Moffat*, Baxter, and Servant in the common Bake-house in *Hassie's Clofs, Edinburgh*, aged 26 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, at the Time and Place libelled, the Deponent was standing in *Mr. Orr's Door*, on the South-side of the *Grass-market*; and, some short time after *Wilson* was cut down, he saw the Pannel take a Gun out of one of the Soldier's Hands, before *Mr. Tod's Shop-door*, which he immediately fired off towards the North-west, a little before which, the Deponent saw him fire his own Gun from the same Place; that, upon the Captain's firing, the Deponent saw some of the Soldiers, who stood behind the *Corn-market*, fire their Guns up in the Air. *Causa scientiæ patet.* And this was Truth, as he should answer to GOD,

Wit.

Wit. XXVII. *John Steuart*, Merchant in *Edinburgh*, aged 30 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, at the Time and Place libelled, the Deponent was standing in a Window of *Vine-garden's* Houfe, on the South-side of the Scaffold; that, some short time before *Wilson* was cut down, upon some Stones being thrown at the Hangman, he observed the Pannel jump down from the South-side of the Scaffold, and walk up briskly towards the Place where the Disturbance was, but nothing in his Hand but a Cane. Immediately after this, *Wilson* was cut down; upon which the Guard, that attended the Execution, began to march up the *Bow*; and that, at the North-west Corner of the Gallows, he observed the Pannel take a Gun out of a Soldier's Hand, with which he pushed back the Multitude; and that, when the Pannel came the length of the *Bow-foot*, being upon the Rear of his Men, he saw him receive a Stroke with a Stone; upon which he suddenly turned about, and waved his Piece to and again towards the Multitude, but without firing: but a very little after that, he turned about, all at once, and stepped some Steps forward, and fired off his Piece towards the Croud Westward; that this was the first Shot which the Deponent either heard or saw made that Day. *Causa scientiæ patet.* And this was Truth, as he should answer to GOD.

Wit. XXVIII. *John Gib*, Cow-feeder in *Canongate*, aged 44 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, he was standing at Mr. *Robertson's* Closs-head in the *Grass-market*; that, a very little after

after the Hangman had been on the Ladder, as he thought, to cut down *Wilson*, he observed the Pannel, with his Gun in his Hand, advance towards the Croud where the Disturbance was, and present his Piece three times ; the last of which times, the Deponent thought, he fired her off ; for he saw the Priming burn to the Pan, but could not see the fiery Smoke at the Muzzle, because of the Croud neither could he, with certainty, distinguish the Report, because several other Pieces were fired off at the same time. That, upon these Pieces being so fired, he saw one *Mac New* drop down at the *Mase-well* ; that, before the Firing above-mentioned, he neither heard nor saw a Shot made that Day. *Causa scientia patet.* And this was Truth, as he should answer to GOD.

Follows the Depositions of the Witnesses introduced for the Pannel.

GEORGE SMITON, Writer in *Edinburgh*, aged 30 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deposed, That, Time and Place libelled, he was present at the Execution of *Wilson* ; that whilst the Executioner was doing his Duty, he saw Captain *Porteous* come off the Scaffold, because the Mob was crouding upon the Guard ; and whilst the Pannel was endeavouring to keep off the Mob, he saw a Man with a silk Napkin about his neck, press upon the Pannel, and seem to endeavour to grasp at him, but that a young Gentleman there in green Clothes, kept him off ; and then the Pannel returned to the Scaffold. But about the time the Criminal was cutting down, or to be cut down, the Pannel went off the Scaffold again, and about that time there was Stones thrown by

by the Mob at the Hangman and the Guard, and some of them fell amongst the Guard: That so far as the Deponent could observe, being upon a Barrazine upon the south side of the Scaffold, five Stones high, the Stones seemed to be pretty large, but the Deponent cannot tell the Dimensions; and then he soon observed a Shot, which was the first that he observed, and came from one of the Soldiers; and this Shot was after the Criminal was cut down: and after this Shot followed, in a very little, three or four other Shots; and at this time the Pannel had his Piece presented toward the Multitude, and that he saw the Flash of the Pan of the Soldier's Gun that fired the first Shot. *Deponed*, That the Pannel was pretty near the Soldier that fired the first Gun. *Causa scientie patet*. And this was Truth, as he should answer to G.O.D.

Wit. II. *Thomas Harlon*, Doctor in the Regiment of *Welsh Fuzileers* in the *Canongate*, aged 39 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, Time and Place libelled, he was present at the Execution of *Wilson*, where he saw several Stones thrown by the Mob at the Guard, of such bigness that was sufficient to have killed them, in case they had hit them in a proper Place, which continued some little time. *Deponed*, That while the Criminal was hanging upon the Gallows, the Deponent saw a Man press towards the Pannel, and being come near him, he held up his Hand to him in a threatening manner, but the Deponent did not hear what Words he uttered. *Deponed*, That when the Pannel was upon the Scaffold, he had no Gun in his hand, but when he came off again, he took a Gun from a Soldier. *Deponed*, That when the Pannel came off the Scaffold, he went about to the west side, and turned about towards the

the North, endeavouring to get his Men together, which he could not well do, they being so much interspersed with the Mob; and then continuing still to throw the Stones, the Pannel turned about with his face toward the west, and having his Fuzee in such a manner in his hand as if he had not designed to fire, but waving it from side to side, rather seeming to intimidate them; and at this time there was a Soldier came up upon his right-hand, and fired close by the Pannel; and this was the first Shot that the Deponent observed. And *deponed*, That he had his Eyes strictly upon the Pannel all this time. *Deponed*, That he did not see the Pannel fire; and he is very well assured that he did not fire at that time. *Deponed*, That this Shot was immediately after the Criminal was cut down. *Deponed*, That after this the Pannel endeavoured to carry off his Men. *Deponed*, That the Soldier that came up by the Pannel's right-side, came up from behind him. *Causa scientie patet*. And this was Truth, as he shall answer to GOD.

Wit. III. *David Rannie*, Merchant in *Edinburgh*, aged 40 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That after the first Firings were over, the Deponent, from his own Window in the Land above *Bailie Dewar's*, at the Foot of the *Bow*, saw the Pannel drawing off his Men, and marching up the *Bow*, halt at *Bailie Crockett's* Shop, at which time the Deponent heard some Soldiers fire, which the Deponent apprehended was in the Rear, the Deponent looking upwards, and they that fired not being under his eye. *Causa scientie patet*. And this was Truth, as he should answer to GOD.

Wit.

Wit. IV. *John Clerk*, Serjeant in the Regiment of *Welsh* Fuzileers, aged 33 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That the Time libelled, the Deponent was sent by the Captain who commanded the Detachment of the King's Forces in the *Lawn-market*, to the Place of Execution, to get Orders from the Magistrates or the Pannel; and having gone up to the Scaffold, and while the Deponent was conversing with the Pannel, he saw a Stone thrown at the Executioner, which cut him on the Nose, so that he bled; and about the same time, there was a Stone about the bigness of the Deponent's two Fists, hit the Calf of the Deponent's Leg, upon which the Deponent, with the Pannel, came down from the Scaffold; and thereafter saw the Pannel moving his Fuzee, in order to keep off the Croud, who had by that time pressed upon the Guard, and drove them about four or five Yards from the Place where they were posted at first; and thereafter the Deponent saw Captain *Porteous* endeavouring to keep off the Mob with his Fuzee, waving it to and again, telling them, *to keep off, or be would fire*; but that there was no Fire at that time. And the Deponent then walking towards the *West-bow*, saw four or five of the Soldiers presenting their Pieces, and saw one of them advance to the right, where the Deponent was standing, and fire upon the Croud, which was the first Shot the Deponent heard: at which time the Deponent saw the Pannel upon his left hand, about seven Yards from him; and then the Deponent saw two others of the Soldiers come up betwixt the Pannel and the Deponent, and fire in the Air; and thereafter heard four or five more Shots, which the Deponent thinks was fired betwixt the Place where the Deponent was standing, and the Pannel; and

the Deponent, during that time, had his Eye fixed upon those who fired, and did not observe that Captain *Porteous* fired, or gave Orders to fire; and upon the first Shot, as aforesaid, the Deponent observed a Man drop at the Entry of *Robertson's* Clofs. *Causa scientiæ patet.* And this was Truth, as he should answer to GOD.

Wit. V. *Colin Campbell* of *Ardonnick*, aged 44 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, at the Time and Place libelled, the Deponent, in a Window from Mrs. *Carmichael's*, opposite to the Scaffold, observed no Disturbance, 'till once the Executioner was going up the Ladder to cut down the deceased *Wilson*, and then saw some Stones thrown at the Executioner, upon which he retired. And as he was passing the *Corn-market*, the Deponent observed one of the Stones hit him, and saw some Stones thrown at the Guard, who were upon the north side of the Scaffold, and saw the Pannel making Motions with his Fuzee, to keep off the Mob, and afterwards turned towards the Foot of the *Bow* very civilly; and then saw a Stone hit one of the Soldiers, and which Soldier the Deponent saw present his Firelock; and saw another Stone hit the same Soldier, and thereupon the said Soldier pointed his Firelock westward, and fired immediately, and another Soldier fired immediately after him; which Firing took the Deponent's Eyes from off the Pannel; and which two Firings, the Deponent thinks, were the first that were fired, and were fired by the said two Soldiers, who had advanced among the Croud from their Party. *Causa scientiæ patet.* And this was the Truth, as he should answer to GOD.

Wit.

Wit. VI. *William Meanie* Serjeant in the City-Guard of *Edinburgb*, aged 48 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, and about the time the deceas'd *Andrew Wilson* was cut down, there were Showers of Stones thrown at the Guard; and particularly, one big Stone lighted betwixt the Deponent and Serjeant *Finlay*, above three Pound weight, and that the Drummer was cut in the Head with a Stone, and the Drum broke with a Stone; and that *Alexander Musket* Centinel, one of the Guard, had his Shoulder-blade broke with a Stone: and that, before these Strokes were given, the Deponent, by Order of the Pannel, was drawing off and forming his Men in the Foot of the *Bow*. That the Pannel gave the Deponent his Fuzee, (which was the Fuzee the Pannel ordinarily carried) to keep while he attended the Execution and the Prayers, which the Deponent returned to the Pannel again, upon the Sign's being given to cut down *Wilson*, and before the Pannel came down from the Scaffold. *Causa Scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. VII. *Alexander Campbell*, Apprentice to *George Young* Surgeon in *Edinburgb*, aged 18 Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, at the Time and Place libelled, he saw several Stones thrown among the Guard, after *Wilson* was cut down, and saw two of the Soldiers of the Guard step aside from among the rest, and fire; and these were the two first Shots that he heard. *Causa Scientiæ patet*. And this was the Truth, as he should answer to GOD.

Wit.

Wit. VIII. *Matthew Howert*, Soldier in the City-Guard of *Edinburgh*, aged 40 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was present at *Wilson's* Execution, at the Time libelled; and that, before and after *Wilson* was cut down, there were a great many Stones, both great and small, thrown among the Guard by the Mob; that, after the Pannel came down from the Scaffold, he saw him wave his Piece he had in his Hand, but did not offer to present it; then he saw a Soldier step out from the rest, and fire his Piece in the Air; as likewise, two or three Soldiers, that fired thereafter, did likewise fire their Pieces in the Air; and that these, who fired first, were standing close by the Pannel and the Deponent, and these were the first Shots he heard that Day. And he heard the Soldiers say one to another, *Fire, or we shall be all knock'd down*; and, upon more Stones being thrown among them, several of them did fire; but, before that time, he heard the Pannel say to the Soldiers twice, *Don't fire*. After these Shots were fired, the Captain marched up towards the *Bow*, and the Men followed him; that, at the time that the Shots were fired, as aforesaid, the Pannel was standing at the Foot of the Steps of the Scaffold, with his Face towards the Castle; and *deponed*, he was one of those that followed the Captain, nor did he see the Captain fire, as he was going up the *Bow*; that when the Captain was marching, upon the Head of the Men, up the *Bow*, he heard a dropping Shot or two fired from the Rear, nor did he see the Captain return again towards the Scaffold, but marched freight on up to the Town. *Causa Scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit.

Wit. IX. *David Martin*, Soldier, in the City-Guard of *Edinburgh*, aged 40 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That the Deponent was one of the Party of the City-Guard, who attended the Execution of *Andrew Wilson*; and, before there was any firing, he did hear the Pannel call to them, *Not to fire*; and before that, the Deponent had his Shoulder-blade disjointed, with a Stroke he received upon it with a Stone. *Causa scientie patet*. And this is Truth, as he shall answer to GOD; and declared he could not write.

Wit. X. *William Byres*, Soldier in the City-Guard of *Edinburgh*, aged 51 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was one of the City-Guard, who attended the Execution of *Andrew Wilson*, and that he did not hear Captain *Porteous* give any Orders to fire; but when the firing happened, he was at some distance from the Pannel. After the firing of several Shots, the Pannel called upon the Soldiers to fall into their Ranks, and follow him, which accordingly the Deponent and the rest did, falling in gradually, as they were able, and followed him to the Guard-house, till they were dismissed; and, in their March up the *Bow*, did hear one Shot that came from the Rear, but by whom he knows not. *Causa scientie patet*. And this was Truth, as he should answer to GOD.

Wit. XI. *James Armour*, Writer to the Signet, aged 50 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That he was looking

looking over a Window to see the Execution of *Andrew Wilson*: After the Criminal was thrown over, and cut down, he observed the Croud of People throwing Stones of considerable Bigness, but against whom they were directed, he knows not; but they fell among the Soldiers, upon which heard two or three Shot, but from whose Hand he did not observe. Thereupon there was an Intermission for two or three Minutes; but thereafter, when the Pannel, with his Party, were retiring, which they did in great Confusion and Disorder, the Croud pursued after them, renewed the throwing of great Stones, and in great Numbers; upon which some of the Soldiers turned about, and marched back some eight or ten Paces, still in Disorder, and then heard a good Number of more Shots fired, which, to his Grief, he saw did great Execution. *Causa Scientiæ patet.* And this was Truth, as he should answer to GOD.

Wit. XII. *John Robertson*, Stabler, in the *Grass-market* of *Edinburgh*, aged 30 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, at the Time libelled, as he stood in his own Window in the *Grass-market*, he saw the Pannel, with his Piece in his Hand, moving it to and again, keeping off the Mob; and heard him say, *Fire*, or, *I will fire*; does not know which of the two; that immediately, after this, he saw a single Man step out three or four Paces before Captain *Porteous*, and fire his Piece: And the Deponent verily believes, that the People, who fell near his Closs, got their Wounds by that Shot, because they were lying in that Place towards which the Man seemed to point. Deponed, That he heard some Firing towards the Foot of the *Bow*, before the last mentioned Shot. *Causa Scientiæ patet.* And

And this was the Truth, as he should answer to GOD.

Wit. XIII. *George Vint*, Coal-grieve to Sir *William Baird* of *Newbyth*, aged 46 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, at the time libelled, he was in *John Robertson's* Window in the *Grass-Market*, when he observed the Pannel moving his Piece to and again, as if keeping off the Mob; and, at the same time, he saw one of the Soldiers, a black-haired Man, step forward before the Pannel, and fire his Piece; upon which the Pannel turned about to him, and pushed him into his Rank. Deponed, That he did not see the Pannel fire at that time, or any other, and that the abovementioned Shot was the first he heard or saw that Day. *Causa Scientie patet.* And this was Truth, as he should answer to GOD.

Wit. XIV. *Alexander Thomson*, Town-Officer in *Edinburgh*, aged 40 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, deponed, That, being upon the Scaffold on the 14th of *April* last, when *Wilson* was executed, the Pannel sent him to the Magistrates, who were in *William Orr's* House, to know of them, how long the Criminal should yet hang upon the Gallows? That he returned to the Pannel with the Magistrates Directions, which was, that he should still hang a Quarter of an Hour; but, before the half of that time was expired, *Wilson* was cut down. *Causa Scientie patet.* And this was Truth, as he should answer to GOD.

Wit. XV. *Peter Colston* Merchant in *Edinburgh*, aged 25 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, Time and Place libelled, and after the first Firing, the Deponent being standing under the North-west Corner of the *Corn-Market*, saw the Pannel march the Guard, under his Command, up the *West-Bow*, and saw several of the Rear of that Guard fire upon the People assembled at the Execution; and, at the same time, observed, that the Pannel was within the first Turn of the *West-Bow*, and so out of the Deponent's View. *Causa Scientiæ patet*. And this was Truth, as he should answer to GOD.

Wit. XVI. *John Kennedy*, Chirurgion in *Edinburgh*, aged 50 Years, or thereby, married, solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, *deponed*, That, some short time after the Execution of *Andrew Wilson*, in *April* last, the Deponent attended the Persons of the Town-guard after mentioned, *viz. Alexander Mutchet* Soldier, the Spene of whose Shoulder-bone was crushed, and *Alexander Braid* Soldier, who had a Contusion in his right Foot; both which Persons informed the Deponent, That they received these Hurts at the Execution of the said *Andrew Wilson*; and that the last mentioned Person is lame to this Day. *Causa scientiæ*. The Deponent was employed to wait upon the said Persons. And this was Truth, as he should answer to GOD.

V E R-



V E R D I C T

Returned by the foresaid JURY,
20th July 1736.

TH E above Affize, having inclosed, did chuse Sir John Inglis of Cramond, to be their Chancellor, and James Davidson, Bookseller in Edinburgh, to be their Clerk. And having considered the Indictment, at the Instance of Duncan Forbes, of Culloeden, Esq; his Majesty's Advocate, for his Highness's Interest, against John Porteous, late one of the Captain-Lieutenants of the City-guard of Edinburgh, Pannel, with the Lord Justice-Clerk, and Lords Commissioners of Justiciary, their Interlocutor thereupon, and Depositions of the Witnesses adduced for proving thereof, the Pannel's own judicial Confession, and Depositions of the Witnesses adduced for the said John Porteous Pannel, his Exculpation; they all, in one Voice, find it proven, That the said John Porteous Pannel, fired a Gun among the People assembled at the Place of Execution, and Time libelled. As also, That he gave Orders to the Soldiers, under his Command, to fire; and, upon his and their so

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firing, the Persons, mentioned in the Indictment, were killed and wounded. And find it proven, That the Pannel, and his Guard, were attack'd and beat by several Stones, of a considerable Bigness, thrown amongst them by the Multitude, whereby several of the Soldiers were bruised and wounded. In witness whereof, our said Chancellor and Clerk, in our Name, have subscribed thir Presents, Day and Place foresaid. Signed,

JOHN INGLIS, Chancellor.

JAMES DAVIDSON, Clerk.



SENTENCE

Pronounced by the LORDS, upon the Jury's returning their above Verdict, 20th July 1736.

TH'E Lord Justice-Clerk, and Lords Commissioners of Justiciary, having considered the Verdict of Assize returned against John Porteous Pannel, of this Date; they, in respect thereof, by the Mouth of John Dalgleish Dempster of Court, decerned

decerned and adjudged the said John Porteous to be taken from the Tolbooth of Edinburgh, upon Wednesday the Eighth Day of September next to come, to the Grass-Market of Edinburgh, the common Place of Execution of the said Burgh, betwixt the Hours of Two and Four of the Clock of the Afternoon of the said Day, and there to be banged by the Neck, upon a Gibbet, by the Hands of the Executioner, until he be dead; and ordained all his moveable Goods and Gear to be escheat, and in-brought to his Majesty's Use: which was pronounced for Doom,





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and brought for Doer.

quined all his mercable Goods and Curn to be
of the Executioner; and he be dead; and ar-
ranged by the Neck, upon a Gallies, by the Hangs
the Affliction of the said Day, and then to be
trunk the Horns of Iron and Feet of the Place of
common Place of Execution of the said Party, be-
come to the Grass-Market of Edinburgh, the
Wednesday the Eighth Day of September next to
be taken from the Gallies of Edinburgh, when
executed and assigned the said John Torricelli to

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JULY 12. 1736.

INFORMATION

FOR

His MAJESTY'S Advocate, for His
HIGHNESSE'S Interest;



AGAINST

JOHN PORTEOUS, late Captain-
Lieutenant of the City-Guard of Edinburgh,
Pannel.



THE Pannel is charged by the Indictment, with murdering, slaughtering, maiming and wounding divers of His Majesty's Subjects, by firing with his own Hand, and causing and ordering a Band of armed Men under his Command, to fire upon a Multitude of *innocent People*, assembled to see an Execution in the *Grass-Market* of the City of *Edinburgh*, without any just Cause or Provocation; contrary not only to the Laws of God and Nature, and to the good and laudable Laws of
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this and all other well-governed Realms, but also contrary to the exprefs *Duty of his Office*, who was one of the Commanders of the City-Guard, intended to preserve the Peace of the City, and to protect the Inhabitants thereof from all Violence, and who was, on that occasion, entrusted with the Command of a large Detachment of the said Guard, to preserve Peace and Order, to secure the Execution of a Sentence of the High Court of Justiciary, and to prevent all Riots and Tumults, whereby the Execution of the said Sentence might be disappointed, the Laws might be violated, and the People assembled might be hurt or destroyed.

The Indictment sets forth particularly, That at the Time and Place libelled, where a great Multitude of innocent Persons of all Ages, and of different Sexes, were lawfully assembled, to see the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court aforesaid, the Pannel having under his Command a Detachment of seventy armed Men of the City-Guard; and having conceived a most wicked and malicious Purpose of destroying, maiming and wounding Numbers of his Majesty's Subjects, the Inhabitants of the said City, and others assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment under his Command to fire upon the People so assembled: That the Men under his Command, having probably, in his Apprehension, fired over the Heads of the People, he, with Threats and Imprecations, repeated his Commands to fire, calling out to them *to level their Pieces and be damn'd*: That, at or about the same time, he level'd the Firelock that was in his own Hand, taking aim at one *Charles Husband*, and fired at him; whereupon he immediately dropt to the ground, having received Wounds whereof he instantly died; at least, that he levelled his Piece, seeming to take aim at some one in

in the Croud, and fired it; and that upon his firing, the said *Charles Husband*, or *one or other* of the Persons in the Indictment mentioned, dropt, having received Wounds by Bullets, of which they instantly died; and that, by his *Commands* and *Example*, several of the City-Guard under his Command, fired upon the *innocent* Multitude, whereby the Persons particularly mentioned in the Indictment, were *killed, maimed, or wounded*.

The Indictment farther charges, That not contented with this *Barbarity*, the Pannel, after he had marched off his Detachment towards, or unto the Place or Street called the *West-Bow*, again ordered the Men under his Command, *to face about and fire upon the People*; and, at or about the same time, fired a *Musket* or *Firelock* that was in his own Hand, having either reloaded, or caused to be reloaded, the Piece formerly fired by him, *or* having taken another out of the Hand of one of the Guard; and that several of the said Guard did, upon that second *Example* and *Command*, fire upon the Multitude, whereby the Persons described in the Indictment were *killed or mortally wounded*. And the Indictment concludes in common Form, that the Pannel is *guilty*, or *Actor* *Art* and *Part* of the Crimes aforesaid, or *one or other* of them.

The Charge in this Indictment is so heinous, that, one should have imagined, it would have been *decent* in the Pannel, to have made no Objection to the *Relevancy*, and to have founded upon no Defence for avoiding the Effect of the Libel, *if true*, but to have contented himself with a flat *Denial* thereof, reposing himself upon his Innocence, if he is truly not guilty of the Facts alledged, without any other Desire, but that of having a fair Examination of unbiassed Witnesses, to be produced by him as well as the Prosecutor, in order to discover the real Circumstances of the Transaction.

But his Procurators, it seems, thought it their Duty to move every Objection against the *Relevancy* of the Libel, and to offer every *Defence* that their Invention could suggest, from a particular Relation of the Circumstances of the whole Transaction, which they laid before the Court upon the Pannel's Information, and which they offered to prove, to make good their Defence.

They informed the Court therefore, on behalf of the Pannel, 'That the Magistrates apprehending, that some violent Attempt might be made for rescuing *Wilson*, the Offender sentenced to be hanged, had ordered the Pannel to attend the Execution, with the greatest Part of the City-Guard, to support and protect the Executioner in the discharge of his Office, with Directions to *repel Force by Force*; that, to make those Directions effectual, *Powder and Ball* were, by the *Town's Treasurer*, delivered out of the *Town's Magazine*, to the City-Guard, the Morning of the Execution, with Directions to load their Pieces; that, besides this Precaution, the Danger of the Rescue appeared to the Magistrates so great, that they desired of General *Moyle*, and obtained a Detachment of the regular Troops, who were posted near to the Place of Execution, in order to support the City-Guard, if there had been occasion; and whose Commanders were told, that the *Lord Provost* would give them *Authority to fire*, if it should prove necessary. That the Pannel, with the Town-Guard, attended accordingly the Execution; that when the Offender was hung up on the Gibbet, the Magistrates retired from the Scaffold, and repaired to a House over-against it in the *Grass-Market*; that after the Offender had been hung up for some time, the Multitude became unruly, and begun to sling *Stones of great Size*, and with great *Violence*; that some of the Guard

Guard were thereby hurt, one had his Shoulder-
 Blade broke, others were bruised, and the Timber of the Drum was beat to pieces; that the *Inference* of the *Mob* growing still greater, and they pressing from all sides upon the Guard, the Pannel, who apprehended they might have intended to carry off the Criminal, who by this time was cut down, in order to attempt the recovering him to Life, found it necessary for him to keep off the Multitude by *Threats* and *Menaces*; that to this end he presented his Piece, first to one Quarter and then to another, calling to the People to *stand off*, and *threatning*, that if they did not, he would *fire*; that nevertheless he neither *fired himself*, nor *gave any Orders to fire*, but on the contrary, when some of the Guard, provoked by the Hurts they received, had, without his Orders or Authority, presumed to fire, whose Example was followed by several others, he did all he could to prevent that Mischief, by commanding them to desist, and actually did beat down the Muzzle of one of the Mens Pieces, who was presenting it in order to *fire*: That finding he could not be obey'd, he endeavoured to march off his Men, and prevailed with several of them to follow him some small way up the *West-bow*, when again some of those Men who followed him, provoked by *what*, he did not know, faced about, and fired towards the *Grass-market*: That the first notice he had of this Firing was by *bearing* it, which made him turn about in order to stop it; that at this last Place he neither *fired*, nor *gave Orders to fire*; that he marched as many of his Men as he could gather together back to the City Guard-Room; that there he prevented the Mens cleaning their Pieces, that the Guilty who fired might be distinguished from the Innocent who did not fire; that his own Piece had not at that

‘ that time been at all fired ; that conscious of his
 ‘ Innocence, and that he had on this, as well as on
 ‘ every former Occasion, done his Duty with *Pa-*
 ‘ *tience* and *Temper*, he presented himself before the
 ‘ *Magistrates* ; whereas nothing was easier for him
 ‘ than to have made his Escape, and that in their
 ‘ Presence the Firelock which he had in his hand
 ‘ was presented, and appeared not to have been at
 ‘ all fired ; and that therefore it was impossible the
 ‘ Libel, as libelled, could be true.’

From this, which was said to be the State of the
 Case, the Procurators for the Pannel contended,
first, ‘ That the Libel was insufficient, as not de-
 ‘ scribing with proper Accuracy, the *particular* Part
 ‘ of the Street, where the Person supposed to be
 ‘ shot by the Pannel stood, and his Situation with
 ‘ respect to the Pannel at the time, because thereby
 ‘ the Pannel was deprived of the Opportunity of
 ‘ making his Defence, by founding it particularly
 ‘ on Circumstances, which he might avail himself
 ‘ of, if the *Position* and *Situation* had been distinctly
 ‘ described.’

To this it was and is answered, That the Libel
 is as particular as the Law requires, describing the
 Street where the Execution was had, which is all
 that the utmost Scrupulosity could expect in such a
 Case. Minute Circumstances cannot be known to
 the Prosecutor, or certainly discovered, but by
 Proof upon the Trial. Every Circumstance of the
 Pannel’s own Acting must be known to him, and
 therefore, if from the *Position* or *Situation* in which
 he was at the time of the *Firing*, he can shew that
 it was impossible he could have killed the Person
 whom he is charged to have shot, describing and
 proving those Circumstances, he may have Advan-
 tage from them, but cannot object to the Prosecu-
 tor, that he did not minutely describe a Situation
 that was not known to him, and which describing
 perhaps

perhaps erroneously, might minister an unjust Occasion to a Criminal to escape Justice. Wherefore this Objection to the Form of the Indictment, ought to be repelled.

But in the *second* place, the Procurators for the Pannel very *unnecessarily*, one should think, if he is innocent of *firing*, or ordering to fire, and in some degree *inconsistently* with *that Plea*, alledged, That the delivering out Powder and Ball to the City-Guard, the ordering so great a Detachment to attend, the calling for the regular Troops to support the Town-Guard, the Intimation to the Commander of those Troops, that they should have Orders to fire in case of Necessity, and the Direction to the Pannel to support the Execution of the Sentence against *Wilson*, and in case of a violent Rescue or Deforcement, to *repel Force by Force*, amounted to a flat Order from the *Magistrates*, to *fire* when it became necessary : And that the violent Assault made by the Mob, as aforesaid, with *Stones*, which were to be considered as *lethal Weapons*, in order, as the Pannel believed, to carry off the Offender, in hopes of relieving him to Life, made it necessary to *repel Force by Force*. Wherefore these Circumstances to infer the Order, and the violent Assault of the Mob, as intencioned, ought to be sustained and admitted to Proof, as a *total Defence* against the Indictment, *at least* as Circumstances fit to *mitigate the Punishment*, and restrain it from the *Pæna ordinaria*; since the Pannel being *versans in licito*, and engaged in the discharge of a lawful piece of Duty, if any *Excess* was committed by him, it ought not to be attended with *capital Punishment*, but ought to be corrected *extra ordinem*, according to the degree of the *Excess*.

To this it was answered, That though it were true, which is not at all upon the part of the Prosecutor denied,

denied, that the Magistrates, upon just Apprehension of Disorders, and an Attempt for a violent Rescue of the Criminal who was sentenced to die, had ordered Powder and Ball to be distributed to the Guard, had increased their Numbers, had obtained Assistance from the Commander of the regular Troops, with Assurance, that in case of Necessity, they should be authorized to fire, had directed the Pannel at all hazards to support the Execution, and prevent a violent Rescue, and had even told him, that in case of Necessity he was to *repel Force with Force*; it will not in the least follow, that those Orders could in any degree justify him, *except* in case of Necessity, *except* there had been an Attempt towards a *violent Rescue*, which could not otherwise have been prevented, and *except* all the proper Precautions for dissipating otherwise the Mob, and for legitimating the Act of *Firing* upon them, had been previously made use of.

For in the *first* place, no Order from any Civil Magistrate whatever, can justify a *Barbarity* so *barbaric*, as that which is charged on the Pannel. Had the *Provost*, and all the *Magistrates of Edinburgh*, been present on the Spot, and had they *ordered* him to fire upon the *innocent People*, when there was no just Cause for so doing, those Orders indeed might subject the Magistrates, as well to the penal Consequences that attend *Murder*, but could not in the least acquit him, who was not at all bound to obey such *illegal* Orders, and who therefore acted *at his Peril*.

In the *second* place, It is not at all pretended, that the Pannel had any Orders expressed or implied to fire, except the Violence of an *Attempt to rescue*, not otherwise avoidable, made it *necessary*. Had that been truly the case, *Firing* possibly might have been the Pannel's Duty, the reading the *Proclamation* undoubtedly would have made it justifiable.

able; and this the Magistrates knew, when they ordered Ammunition to be distributed, and invited the regular Troops to their Assistance. But 'till it became *necessary*, when there was no Hazard of a *Rescue*, before any Disorder was sought to be quell'd, by the legal Precaution of reading the *Proclamation*, which is intended to intimidate Rioters, and to separate the Innocent from the Guilty, by giving due Notice to all *thoughtless* People, who without any *Malevolence* are mixed with the Multitude, to separate from the *Ill-meaning*; it was the most *cruel*, as well as *unjustifiable* Act, that has at any time been heard of, to make use of the Weapons that were put in the hands of the Guard, for the *Security of the Peace* and of the *People*, to destroy so many *Innocents*, who had not in any degree offended.

For *thirdly*, Though the Pannel mentioned the flinging of Stones, and the Size of some of them, with some *Hurts* received there-from, yet the Libel charges, and he admits, that the Criminal was *cut down* before this trifling Provocation prevailed with any one to *fire*: His Duty then, so far as concerned the Execution of the Sentence, was over. He alleges no Danger, nor can he in those Circumstances, of a *Rescue*; no Invasion with *Fire-Arms*, or other *mortal Weapons*, fit to deforce or destroy a Detachment of *Seventy disciplined Men*, with *loaded Pieces* and *screwed Bayonets*. How then can the *Exigence* or the *Orders* defend him? If his Act had been absolutely *necessary*, some Defence might have been founded on that *Necessity* joined with his *Orders*: But when his Allegations, though they were true, do not point out the least *Necessity*, and are in reality founded on nothing else than the *customary Imperiour* on such Occasions, of flinging Dirt and Stones at the *Executioner*; though the Provocation thereby given, might perhaps justify

a choleric Man, for drubbing any of the Actors for their Wantonness, yet to be sure it could not justify the Slaughtering of the Offender, far less can such Impetuosity in a few Boys, or other idle People, excuse the firing *Sharp Shot* upon an innocent Multitude, whereby Numbers of his Majesty's Subjects were destroy'd. And therefore it seems to be beyond all doubt, the Pannel can find no Shelter from those Orders, or the Duty he imagines lay upon him to fire; and must therefore stand or fall, upon his being, or not being guilty of the Facts charged upon him.

The Procurators for the Pannel endeavour'd to find an Argument for him, in a late Resolution of the Court, which suspended a Sentence of the Court of Admiralty, proceeding upon an Interlocutor, that found it necessary for Soldiers, who happened to kill in the Execution of their Duty, when, by Order, attending Custom house Officers, to prove, that the Killing was *necessary for the Defence of their Lives*, inferring from this Resolution, that the Court did not think it necessary for the Pannel to prove, that he was in *Danger of his Life*: And tho' all that their Observation necessarily implies were granted, they could have no Benefit by it, because, in *this Case*, the Pannel neither *does*, nor can *over*, that the *Firing*, which he was personally guilty of, and ordered, was necessary for securing the Execution of that *Trust*, that was committed to him, or for preserving the Rights of the Crown, or any Subject.

Where a Man has by Law Weapons put in his Hand, to be employ'd, not only in Defence of his Life, when attack'd, but in Support of the *Execution of the Laws*, and in Defence of the *Property of the Crown*, or *Liberty of any Subject*, he doubtless may use those Weapons, not only when his own Life is put so far in danger, that he cannot probably

bably escape without making use of them, *but also* when there is *imminent Danger*, that he may by Violence be disabled to execute his *Trust*, without resorting to the Use of those Weapons: But when the *Life* of the Officer is exposed to *no Danger*, when his *Duty* does not *necessarily* call upon him, for the Execution of his *Trust*, or for the Preservation of the *Property* of the *Crown*, or the Preservation of the *Property* or *Liberty* of the *Subject*, to make use of mortal Weapons, which may destroy his Majesty's Subjects, especially *Numbers* of them who may be *innocent*, it is impossible, from the Resolution of the Court of Justiciary hinted at, to expect any Countenance to, or Shelter for, the *inhumane Act*.

And upon a Principle very near allied to this, the Pannel's Pretence, that being *versans in licito*, and intrusted with the Execution of legal Orders, any *Excess* that for *lack of Discretion* he may have been guilty of, cannot be punished *pena ordinaria*, ought to be *repelled*; for 'tis obvious, the *Trust* reposed in him, and the *Duty* expected from him, was no more than to see the Execution perfected, and to resist any *violent Attempt to rescue*, which should disappoint the *Execution of the Law*. Now, when the Sentence of the Court of Justiciary was executed, when the Criminal was *banged* and *cut down*, before any Person fired, the *Trust* reposed in the Pannel, and the *Duty* expected from him ceased: He was no longer an Officer employ'd to that end for which the Fire-arms were loaded, and his Actions came to be estimated of by the same Rules that would have made them *lawful* or *unlawful* upon every *ordinary Occasion*, where no particular *Danger* threatened, and where no *necessary Service* was in View.

And therefore, as in such Cases, the Pannel must be convinced, that nothing short of being *constituted in immediate Danger of Death* without firing, could justify

justify him or his Guard, for making use of *loaded Fire-Arms*, he must in consequence acknowledge, that in the Case in question, no Danger of *Life* which he could not have *avoided*, having threatened him or his Guard, he was absolutely *inexcusable* for *firing*, and that therefore his *mischievous* and *temerarious Act* must be attended with the *biggest Penalty*.

○ An *armed Man* who assaults, and without just Cause destroys another Man *tho' armed*, and in no particular *Trust* or Confidence with him, the Law considers and demeans as a *Murderer*; but when the *Captain of a City-Guard*, who has an armed Force committed to his Care, for the *Good and Safety of the Community*, thinks fit, upon any *slight* Offence or Provocation, to turn *those Arms* and *that Force* upon a Croud of *Citizens lawfully*, as well as *innocently* assembled, he is, in addition to the *Slaughter and Destruction* that ensues, *guilty* of the most *notorious Breach of Trust*, and for an *Example* to others, whom it may be necessary for the *Good of the Community* to trust, ought to be punished in the most severe Manner. Men so *trusted* are under *double Ties*, for besides the general Obligations of *Duty and Humanity*, a *particular Confidence* is reposed in them, which, at the *Peril of their Lives*, they ought to answer.

The Procurators for the Pannel complained, That in the *Indictment* he was charged with a wicked and *malicious Purpose of destroying, wounding and maiming* Numbers of his Majesty's Subjects; and by the Pannel's *sober and modest Deportment* on former Occasions, and the whole *Circumstances precedent* to the *melancholly Accident* now in question, endeavour'd to show, that he had no *premeditated malicious Design*. But this again was to no purpose: The Prosecutor never heard, nor, so far as he knows, did ever any Man before his Time, complain

plain of the Wickedness or Inhumanity of the Pannel, and he has received no Information, by which he can be induced to think, that for any *considerable Time before the Fact* complain'd of, the Pannel had *premeditated* the destructive Action of which he is accused. But then his Procurators very well know, that *Firing and ordering to fire imply*, and are *Proof of a wicked and Malicious Purpose of destroying* those that are *fired at*: *malitia and propositum precedentur ietum* in the Construction of *Reason*, as well as *Law*; and whoever wilfully murders and destroys his Majesty's Subjects, must be deemed as a *Murderer*, if his malicious Purpose preceded the drawing of the Tricker, or giving the Orders, *one moment*, as if it had been pre-conceiv'd a *whole Year*.

These *Shews of Defence*, rather than *Defences*, being removed; the next thing that comes to be considered, is the History of the Pannel's *Behaviour*, during the *melancholy Transaction*, which his Procurators offered to prove, and insisted, would, *if proved*, be a sufficient *Defence* against the Facts charged in the *Libel*.

But in this the *Prosecutor* can by no means agree; for he takes it to be extremely plain, that every single Circumstance alledged by the Pannel *may be true*; and yet it *may also be true*, that he with his *own Hand fired*, and killed one or more of the *innocent People*, and that he ordered the Men under his Command to *fire*.

It may, for example, possibly be true, that he, at some Period or another of the Action, called out to the Multitude to stand off, or that he would fire; that he at some one Point or another of Time, prohibited the Men to fire, and struck down the Pieces of such as were presenting them; and yet it may also be true, that he at some other Point of Time, gave the precise Word of Command to fire, and actually

tually fired the Piece that was in his Hand. Before he lost his Temper, he might have threatened only: Before he took the Resolution of annoying, as well as after he saw Mischief done, he might have endeavoured to prevent a particular Act of Inhumanity; but his doing so at certain Periods, is no conclusive Evidence, that at other Points of Time, his Conduct might not have been very different.

Were his giving Orders, or actual firing dubious, the Circumstances mentioned for the Pannel, might create a strong Presumption for him: But if it shall be proved, as it is charged in the Libel, that he actually fired the Piece in his Hand oftner than once, and gave positive Orders to fire; What can it avail him, that at some other Periods of the Fray he behaved himself in a different manner? since both the one Allegation and the other may be true.

But the Procurators for the Pannel insisted, That tho' the Proposition they undertook to prove, was in some degree a Negative, yet it was so circumstantiated as to be capable of a positive Proof; for they said, that credible Witnesses could be produced, who would inform the Court and Jury, that during the whole Fray, they kept their Eyes upon the Pannel, and were attentive to his Actions; and that they could take upon them to say, that throw-out the Scuffle he did not fire his Piece, nor order the Guard to fire, but that he threatened to fire, which might by Persons at a distance, who heard the word Fire only pronounced, be mistaken for a Command, and that he presented his Piece only in a menacing Posture, but without firing, which might have misled the Spectators into an Opinion, that he did fire, tho' he really did not, if any one who was near him happened to discharge his Shot about the same Time.

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This Reasoning however, is manifestly defective, because the Evidence of Witnesses, who shall say they *did not see or bear*, bears no proportion, in point of weight, to the Testimony of those who shall, upon Oath, positively say that they *did bear or see*.

And besides the obvious Reason for maintaining this Distinction in the common case, there is a particular Consideration that supports it; in the case of a *Fray or Tumult*, where *Shots are fired, Murder ensues*, and there is a general *Confusion and Surprize*. No one could possibly be so interested in keeping his Eyes upon the Pannel, when it could not be foreseen there would be occasion to give Evidence touching his Behaviour, as not to be liable to be carried off from that Object, upon any *fresh Surprize* that happened in the Tumult: the *firing of a Shot, the flinging of a Stone, the extraordinary Behaviour* of any one of the *Multitude*, or of the *Guard*, might imperceptibly have drawn the Eyes and Attention of any Spectator, from the Pannel to that *new Object*, and prevented his seeing or hearing what he said or did in the mean time. And therefore no Witness, or Number of Witnesses, who should take upon him or them to say absolutely, that the Pannel *did not at any Period* of the Fray fire, or order to fire, would at all be *credible*, at least most certainly they could not be *credited* against such Witnesses as should positively say, that they *saw or heard him fire, or order to fire*.

If Witnesses shall say against the Pannel, that they saw him present his Piece, and fire; and for their *Causa Scientiæ* shall aver, that they observed *Fire and Smoke* issuing out of the *Muzzle* of his Piece, and a Man drop down dead in the Place towards which, he pointed it, will that Evidence be sufficiently contradicted, by Persons who may say they observed no such thing, or that others of the Guard

Guard fired about the same Time, and in the same Place? 'Tis humbly thought it cannot; because this is setting up *negative Evidence* only against *positive*, which neither *Law* nor *Reason* permits.

And if credible Witnesses shall aver, that the Captain distinctly ordered *the Guard to fire*, can it avail him, that other Witnesses heard him threaten the Croud, that if they did not retire he *would fire*, without hearing the *positive Orders for firing* given? In a *Tumult*, every Individual cannot possibly hear every thing that passes; but then it is no Evidence that particular Words were not uttered in a *Fray*, that *some* Persons present at the Fray did not hear or attend to them.

And the Pannel, in framing his Defence on this Article, does not seem to have attended to what is expressly libelled against him, that in great Anger he said to the Men under his Command, upon their firing over the heads of the Multitude, *Level your Pieces, and be damn'd*. Will this Circumstance, should it be proven, be at all consistent with that part of the Defence which tends to render the *Expression Fire* dubious? If the Pannel's Passion motivated him to utter the Expression, *Level your Pieces, and be damn'd*, is it at all doubtful in what sense the Words *Fire* was pronounced? These things are, 'tis thought, too plain to be farther insisted on.

The only remaining Circumstance, on which the Procurators for the Pannel seemed to lay stress, was the Condition of his Firelock after the Action was over, and his *voluntary* presenting himself before the *Magistrates*, when he could have made his *Escape*, from which they would have inferred an *Impossibility* that he was guilty of *actual firing*, his Firelock appearing not to have been discharged; and a strong *Improbability* that he was conscious of having given any *criminal Orders*, since without Necessity he freely presented himself to Justice.

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Now as to these Matters, it must be observed, *first*, That the Condition in which the Pannel's Firelock appeared, can yield no Evidence for him: A Piece that has been fired, may be re-loaded, and so cleaned and brushed up, as to leave no Vestige or Mark of the former Firing; and the Piece which the Pannel made use of in firing, might have been changed, and another produced to the Magistrates in the room thereof.

But, *2dly*, The Indictment no where avers, that the Pannel made use of *his own Piece* when he fired. Where he is first charged with firing, no more is said, than that he levelled the Firelock *that was in his Hand*, and fired it at *Charles Husband*. Now the Firelock that was in his Hand, might have been that belonged to *another Man*, as well as *his own*. And in the other Part of the Indictment, where he is charged with firing, it is said, that he made use of a Musquet or Firelock, that was *in his Hand*, having either re-loaded, or caused to be re-loaded *his own Piece*, or having taken another out of the Hand of one of the Guard; So that the Libel in every Article of it *may be true*, and proved; and yet it *may be also true*, that the Pannel did not fire *his own Piece*.

And as to the Article, That the Pannel, conscious of no Guilt, appeared *voluntary* before the Magistrates, when he could easily have made his Escape: It can possibly infer no Presumption for his Innocence, if the Facts charged in the Indictment are made good. Whoever shall be satisfied by the Proof, that the Pannel acted in manner libelled, must be convinced, that he was governed in his Actions by no Principle of *Discretion*, and must therefore lay no Weight upon an Act of his, which can yield no Inference, unless he is supposed to have been governed by *Discretion* and *Prudence*.

Having thus run over the several Circumstances of the Pannel's Narrative, the Prosecutor apprehends;

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he may safely conclude, that they cannot *jointly* or *separately* be sustained as a Defence against the Charge laid in the Indictment: Because, tho' every Circumstance alledged, were undeniably proved, the *unhappy Pannel* might nevertheless be guilty, and a positive Proof of the Facts charged must necessarily prevail with every unbiaſ'd Jury-man, to join in a *Verdict* against him.

The *Prosecutor* is nevertheless far from wishing, that the unfortunate Pannel should be deprived of an Opportunity of laying every Circumstance that may make for his Defence before the Jury by Proof, tho' he humbly insists they cannot be sustained as a *Defence relevant to assize from the Indictment*. It is possible the Fact may come out otherwise in the Trial, when Witnesses are upon Oath, than it did when the Examination was taken in the *Recognition*; and should the Proof of the Indictment be in material Circumstances defective, the Evidence offered for the Pannel may have its Weight; wherefore, so far as the Forms of the Court will allow, the *Prosecutor* makes no Opposition to the indulging the Pannel to bring what *legal Evidence* he can, for the Information of the Jury.

It is far from being the Interest of the *Crown*, or of the *Publick*, that an *innocent* Man should suffer; but it is greatly the Interest of both, that a fair and strict Enquiry be made, where the Guilt lies, when a *Massacre* so *cruel*, and so *dangerous* happens; to the end, that if the Officer, who has Power put in his Hand for the *Preservation of the Peace*, and for the *Protection of the People*, should, from any unjust Motive whatever, make use of that Power in *Breach of the Laws*, to the *Destruction of the People*, he may be made an *Example* to restrain others in the same Circumstances, from the like *monstrous* and *dangerous Abuses* in Time coming. *In Respect whereof, &c.*

DUN. FORBES.



JULY 13, 1736.

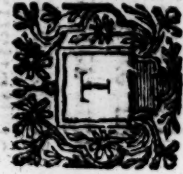
INFORMATION

FOR

JOHN PORTEOUS, late Captain-Lieutenant of the City-Guard of *Edinburgh*;

AGAINST

His MAJESTY'S Advocate.



THE Pannel stands indicted, at the Instance of His Majesty's Advocate, for His Highness's Interest, for the Crimes of Murder and Slaughter, maiming and wounding; and the Facts charged against him, from whence these Crimes are pretended to be inferred, are these following:

That the Pannel, being one of the Captain-Lieutenants of the said City-Guard, was, by the Magistrates of the City, ordered to attend, with a Detachment of about 70 Men of the said Guard, at the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court of Justiciary; and that the said *Andrew Wilson*, having hung upon the Gallows, erected for his Execution, in the Street called the *Grass-Market*, until he was dead, at least for a considerable time, and so long that there was ground to conclude he was dead, he, the said Pannel, con-

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ceiving

ceiving a wicked and malicious Purpose of destroying, wounding and maiming the Persons, Inhabitants of the said City, and others assembled at the said Execution, did, without any just Cause or necessary Occasion, order the said Detachment, under his Command, to fire upon the People so assembled; and that some of the Men having fired, as it would seem the Pannel apprehended, over the Heads of the Multitude, with intention to avoid doing them harm, he, the said Pannel, did, with Threats, repeat his Commands to fire; calling out to the Men, *To level their Pieces and be damn'd*, or Words to that Purpose; and that, at the same time, he levelled the Firelock that was in his own Hand, taking aim at one *Charles Husband*, and having fired the said Firelock, the said *Charles Husband* immediately drop'd to the Ground, having received a Wound or Wounds, by Bullets or large Drops of Lead, whereof he died in a short space; and that, by the Pannel his said Example and Command, several of the said Guard, to the Number of about 20, did, at the same time, or soon thereafter, fire upon the innocent Multitude, by which Fire two other Persons were killed, and severals others wounded, maimed or hurt; and that the said Pannel having thereafter marched off the said Detachment, of the Guard, into that Part of the Street aforesaid, called the *West-Bow*, he did again, without any just Cause or Occasion, order the Men, under his Command, to face about and fire upon the People: And that, at this time, the said Pannel did fire a Musket that was in his own Hand, having either reloaded, or caused to be reloaded, his own Piece or Firelock, or taken another out of the Hands of one of the Guard, and that severals of the said Guard did, upon that second Example and Command of the Pannel's, fire upon the Multitude, by which Fire three other Persons were killed; at least that, by the

the said Firings of the Pannel, or of the Firings of the other Men in the said Detachment of the Guard, proceeding from the Pannel's Order and Example, the several Persons, mentioned in the Indictment to have been killed, maimed or wounded, were all respectively killed, wounded or maimed: Whereby the Pannel is guilty of the killing, wounding or maiming the said Persons; at least, is Art and Part thereof, or accessory thereto. From whence the Indictment concludes, That the Pannel ought to be punished with the Pains of Law; *i. e.* Capitally.

To this Indictment the Pannel pleaded not guilty; for that he had, at no time, during the Execution of *Andrew Wilson* aforesaid, given any Order, or shewed any Example to the said Detachment of the Guard then under, or that ought to have been under, his Command, to fire upon the Multitude so assembled; and that he did, at no time, fire any Piece or Firelock himself upon the said Croud. That tho' it might be true, that at, or about the time of the said Execution, several Persons were killed and wounded by the Firings of that Detachment of the Guard, which indeed ought to have been under the Pannel's Command, and which he does, with great Grief and Sorrow, regret; yet that, as such Firing proceeded wholly from the Men in the said Detachment, without any Order or Example from the Pannel, so he could not be charged therewith, however fatal or tragical the Consequences of such Firing may have proved.

That though the Pannel, as conscious of his own Innocence, could safely rest his Trial upon his Denial of the Facts aforesaid, and upon such Proof as he could bring, by the Evidence of Multitudes of Persons of undoubted Credit, who happened to be present, close by him, during this unhappy Scene, that he was nowise instrumental in the killing or wounding

wounding the said Persons ; but that, upon the contrary, he did all that was in his Power to prevent and restrain the said firing upon the Multitude : yet, that he was advised by his Council, that they could not during the conducting of his Trial, consent with their Duty, suffer him, the Pannel, to omit or abandon any Defence that was competent to him in Law ; and that therefore, as by the Law of *Scotland* the Pleading to an Indictment upon supposed Facts, is no legal Admission of such Facts, the Pannel was at liberty to plead any other Exception that lay against the Form of his Indictment, or even to plead, That though such Firing had proceeded from his Order or Example, yet even in that case ; such firing, and the Consequences wherewith it was attended, was not sufficient to support the Charge against the Pannel, of the Crimes of either Murder, Slaughter, Maiming, or Wounding, or to render him obnoxious to the Pains libelled.

And in the entry of the Debate, the Procurators for the Pannel ask liberty to offer to the Court a full Recital of the Behaviour of the Pannel, during the Execution of the said *Andrew Wilson*, and for some short Space previous and subsequent thereto ; and also, to offer a short relation of what they apprehend was the cause that the Execution of the said *Andrew Wilson* was attended with such an unusual Confluence of People, and was ordered to be guarded and over-seen by such a numerous and unaccustomed armed Force.

The said *Andrew Wilson*, along with one *Robertson* and others, had been sentenced to Death by your Lordships, for robbing one of the Collectors of his Majesty's Revenue of considerable Sums of the Money of the Publick ; and while they lay under this Sentence, they were allowed, as usual, to go to the Church adjoining to the Prison, for the Benefit of Divine Service, under the Custody of a small

Detachment of the City-Guard. And while the Convicts were thus at Church, *Robertson*, one of them, found Means to escape from his Keepers of the Guard, by suddenly jumping over a Pew, and getting out of the Door of the Church; his Retreat apparently being favoured by the Mob, or lowest sort of the People, he easily made his Escape, without having been ever since overtaken.

From this Escape of *Robertson's*, so favoured by the Mob, and from strong Surmises and Suggestions, that, at the Execution of *Wilson*, a Rescue was intended by the Mob, which indeed there was a reasonable Ground to apprehend; because the Commons have imbibed a pernicious and absurd Conceit, as if the Robbing of the publick Money was a Crime more pardonable than private Robbery: Therefore it was, as the Pannel apprehends, that the Magistrates of the City, from a Sense of their Duty to prevent the Execution of the Law's being any further defeated by the Rescue of *Wilson*, took the strongest Precautions that the Execution of him should be made effectual.

In consequence whereof, as would seem, the Provost of the City sent for the Pannel, in whom, he must take the liberty to say, Confidence was generally put upon those difficult Occasions, and told him, That there being great Apprehensions of a Mob at *Andrew Wilson's* Execution, that therefore there was a Necessity to be well prepared to prevent their Designs; and, for that end, that he would have the whole City-Guard to attend at the Execution, he having given Orders to the Town-Treasurer to furnish the Men with Powder and Shot, and such other military Ammunition, as might be necessary for the Use of the Men in maintaining the Peace of the Town, and supporting the Execution of the Laws. And this Conference

Conference with the Provost happened upon the *Monday* preceeding the Execution of *Wilson*, which followed on the *Wednesday* thereafter. But it seems the Magistrates of the City, not thinking even this Precaution sufficient, upon the *Tuesday* thereafter the Provost sent the Pannel with a Letter to General *Moyle*, residing near the City, and chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was, desiring from the General an Order for a Party of the Regiment lying in the *Canongate* to enter the City, (a thing very uncommon, except in the Case of urgent Necessity) in order to over-awe the Mob, and thereby maintain the Peace during the said Execution.

It seems this Letter to the General induced him to send a verbal Message in return thereto, by a Person of known Honour and Veracity, Major *Pool*, of that Regiment now lying in the *Canongate*, who told the Provost, that the General wanted to know of him what Part the King's Troops were to act, and what Precautions had been taken for preventing any Insult or Invasion that might be made upon the Troops, or what Length these Troops might go in the Case of Tumult or Disturbance. To which the Provost made Answer, That there was no Reason to apprehend any Inconveniency would happen to the King's Troops, because he would have them only to parade, for a Terror to the Mob, in a Street called the *Lawn-market*, removed from the Sight of the Execution, but at a small distance only, where nevertheless they would be ready at a Call in case of Necessity. But that he had ordered the whole Band of the City-Guard to attend at the Execution itself, with proper Arms and Ammunition, namely Slug-shot, with Orders to repel Force by Force, and even to discharge their Arms among the Mob, in case of Resistance.

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On *Wednesday*, the Day of the Execution, in the Forenoon, the Pannel attended the Provost, and told him, that, in obedience to his Commands, the Men were all ordered to be in readiness, their Arms put in order, and loaded; whereof the Provost approved, and told the Pannel, that he was to be ready betwixt two and three in the Afternoon, with his Guard, and to draw out until the Party of the King's Troops, from the *Canongate*, past him; and that so soon as the King's Troops were drawn up in the *Lawn-Market*, the Pannel, with the City-Guard, should forthwith march to the Prison, and conduct the Prisoner to the Place of Execution, without allowing him first to go to the Town's Council-House, as usual; still with Intention, as would seem, to prevent any Opportunity of Rescue, or Disturbance upon that head. And at this time in the Forenoon, the Pannel humbly proposed to the Magistrates of the City, that they would send a Proclamation through the Town, as a Caution to such innocent unwary People, as might, by curiosity, be drawn to the sight of the Execution, warning them of their Danger, in case any Disturbance should happen, or Attack be made upon the Guard. And accordingly *George Lindsay*, one of their Clerks, made a Scroll of the said Proclamation, to be sent through the Town; but for what Reason it was not proclaimed, the Pannel knows not. And, at the same time, the Pannel remembers, some one or other of the Common-Council of the City, proposed, in case of Disturbance, the reading of the Riot-Act, and, for that purpose, sent for a Dozen of Copies of the Act to a Bookseller's Shop, in order to distribute them amongst the proper Officers of the Law, authorised to read and proclaim such Act: but it seems, at no time, either of those Proposals were put in execution; nor, at the time of the said Execution, did any Officer

ficer of the Law, authorized to proclaim such Act, attend with the Pannel.

A short space before the Pannel march'd with his Men from the Guard-House, towards the Place of Execution, he was heard say, That he had no Cartridges in his Box ; on which a Corporal told him, that he would get him some : and accordingly the Corporal did, in the presence of several of the Men, open the Pannel's Cartridge-Box, wherein it was observed there were no Cartridges, and put three Cartridges therein, with one of which the Pannel loaded his Piece, and immediately marched away with the Men.

When the Criminal was conducted to the Scaffold erected for his Execution, the Detachment of the City-Guard were posted on the Street, in a Circle surrounding the Scaffold, in order to keep off the Mob ; but, because of a certain Building, called the *Corn-market*, nigh adjoining to the Scaffold, Part of the Men did also incircle that Building. (And here it may not be improper for the Court, to cast their eye upon a Plan of the Ground; and the Posture of the Men, in order to have a clearer View of the Descriptions to be hereafter mentioned.)

So soon as the Criminal was thrown over the Ladder, and so left hanging upon the Gibbet, the City-Bailiffs immediately withdrew nigh to, directly opposite, and in view of the Scaffold, but without leaving any Order, or Officer of the Law, to attend with the Pannel : And it had happened, that some short space before the Act of Execution, while the Minister was assisting the Criminal by Prayer, the Pannel had gone up to join, leaving his Piece with the Serjeant ; and so soon as publick Prayer was ended, or some short time after, and the Convict left to his own private Devotion, the Pannel took back his Piece in his Hand, and afterwards came

came off the Scaffold, and posted himself at the West End of the Detachment of the Guard.

So soon as the Convict had been hung up, as aforesaid, and that the City-Bailiffs had withdrawn from the Scaffold, the Mob began to be troublesome; intending, as would seem, to use this last Shift, immediately to cut down the Criminal, and endeavour to bring him to Life by bleeding; an Expedient, which, when timeously applied, has, on many other Occasions, been known to be attended with Success: And the Mob fell a-murmuring, that they would have him instantly cut down; and if it were not quickly done, they would do it themselves. And at this time they press'd hard upon the Guard, striking at them with Sticks, seizing of their Fire-Arms and Bayonets, and throwing exceeding big Stones at the Guard; one whereof cut a Drummer to the Skull; another broke one of the Mens Shoulder-Bones; another wounded one of the Mens Legs; and several others of the Men were wounded, whereby they are yet unable to do Duty. The Truth of all which can be attested by their common Surgeon, who is by the City ordered to attend them upon all Exigencies.

This Insolence in the Mob alarm'd the Pannel; and still observing it to increase, he was apprehensive that the Mob might obstruct the perfecting of the Execution; for no Criminal can be cut down from the Gibbet, but upon the Order of a City-Bailiff, upon a Judgment that the Criminal has hung up until he is compleatly dead, agreeable to the Sentence, which always commands such Convict to be hang'd until he be dead: Therefore it was, that the Pannel sent a Message to the Bailiffs, to know if he should suffer the Criminal to be cut down from the Gibbet; who brought back an Answer, that the Convict was to hang there yet for a Quarter of an Hour.

At this time the Mob wax'd exceeding bold, became very turbulent, and prest hard upon the Guard; and while the Pannel was endeavouring to keep off the Croud from pressing among the Soldiers at one End of the Scaffold, some of the Convict's Friends, assisted by the Mob, catch'd an opportunity, and cut him down without any Order. And tho' the Convict, being thus cut down, was in the Possession and Keeping of the Mob, who were endeavouring to recover him to Life, by causing the Veins of both Arms to be opened, whether it was that they were apprehensive that the Guard would recover him out of their hands, as having been cut down without Order, or that the Officers of the Law were designed to see to his Interment, and that he was executed to death; or that the Convict's Body was intended to be given to be anatomized by the Surgeons, as is sometimes practised, where Persons of low Degree, or notorious Offenders, are sentenced to death, or from whatever Motive it proceeded, the Mob began to insult and attack the Guard: And upon this Attack it was, that the Man aforesaid had his Shoulder-blade broken; and another so bruised, that he has been never able to do Duty since; and the Timber of the Drum was broke, by the force of an exceeding large Stone that was thrown; and several others of the Men were hurt and wounded.

This Violence in the Mob so alarmed the Pannel, that he made a Step or two forwards to the westward of the Scaffold, turning about his Face towards the *West-part*, from whence the throwing of the Stones mostly proceeded; and having put his Piece to his Shoulder, he levelled it at the Mob, and pointing it around to them, threatening with an audible Voice, that if they would not be at peace, and leave off throwing Stones, and attacking the Men, *he would fire among them;* but immediately re-

recovered his Piece without firing it; the Threats being only intended to intimidate the Mob.

But unfortunately, upon this ensued the whole tragical Scene; for no sooner had the Pannel stepped forward, threatening to fire, as aforesaid, but one of the Men came up from behind him, and running by him upon his right hand, instantly discharged his Piece; upon which, one of the Croud dropt down, supposed to be *Charles Husband*, and which *Charles Husband* will upon proof be found to have been the Person who tumultuously stepped in and cut down the Criminal.

Immediately upon this first Fire, another of the Guard came up to the Pannel, with his Piece presented and cock'd, and ask'd if he should fire; to which the Pannel answered with some Vehemence, *No, by no means*, and struck up his Piece, bidding him go to his Rank, and actually thrust him thereto.

After the Example of this first Fire, several more of the Men were heard to discharge their Pieces, but upon what Provocation the Pannel cannot tell, the Shots having been at a considerable distance from the Pannel, proceeding, as is supposed, from such of the Men as were standing at the south-west Corner of the *Corn-market*; whereas, as has been noticed, the Pannel was still standing at his former Station, to the west of the Scaffold and Gibbet.

The Pannel not knowing the fatal Consequences of those Shots, but suspecting however that mischief would happen, seeing the Men had been so rash as to fire without Orders, thought it was the best course he could take, to lead off the Men of the Guard as soon as he could; and for that end, he called to them aloud to follow him. And after having given Orders to the Serjeants to gather them together, for it was impossible to bring them into Ranks, by

by the Confusion of the Mob, he marched off as many of them as he could find, by the north side of the Scaffold, towards the Foot of the *West-bow*, and towards a parcel of the Men whom one of the Serjeants had got together at the Foot of the *Row*. But as he was going to join that parcel of the Men, he heard a Piece fired near him, with which he was a good deal surprized, and yet more, when he observed two or three People fall to the Ground: And which Observation was the first thing that greatly alarmed the Pannel, as knowing from thence that certainly Mischief was done. But it is certain, that this fatal Shot did not proceed from the Pannel, but from a certain Man in the Guard, that can be well proven, who after having fired this Shot, immediately retired amongst the Croud, and then got himself joined to the Party. And surely the Magistrates of the City will remember, that when a Precognition was taking of the several Facts and Occurrences upon this tragical Day, that a certain Person told them, that if they would be pleased to sist the whole Band of the Guard before them, he would point out the Man who made this last Fire; but the Magistrates overlooked this Offer.

As soon as the Pannel saw there was no restraining the Men from Irregularities, he marched off so many of them as he had got together, without taking time to form them into any Order; giving Orders, at the same time, to the Serjeants to beat and press off the rest with all manner of Dispatch. Upon which, he observed those that had straggled come off partly from about the Scaffold, and partly from the East-end of the *Corn-market*, and fall into the Rear; and while the Pannel was thus marching up the *Bow*, upon the Front of the foremost Part of the Men, and had come as far almost as the Turn of the *Bow*, he heard some dropping Shots firing in the Rear, at about thirty or forty

Paces distant from him ; which, he supposes, may have proceeded from those Men, who were straggling upon the East-side of the *Corn-market*, nigh to the Head of the *Cowgate*, but upon what Occasion the Pannel knows not. But being alarmed with the Shots, he looked back, supposing the Men might be attack'd by the Mob ; and observing no Marks of any such Attack, he thought the most prudent Course he could take, was forthwith to march off the Men.

It falls here to be noticed, that all this Firing, from first to last, and whereby so much Mischief has been done, lasted not above two or three Minutes ; and therefore, considering the Violence of the Mob, and the straggling Situation of the Men of the Guard, and supposing the Truth of the above Narrative, which will be attested in proper time by the Oaths of many Gentlemen, of undoubted Veracity, and who had fair Opportunity of Observation at the time, it is left with the Court, and to every impartial By-stander, whether the Pannel could well have done more for the Safety of the Burgh ; considering that it shall also be proved, that, during these few Minutes of firing, accompany'd with great Hurry and Confusion, the Pannel gave several repeated Orders to the Men to refrain from firing ; but, observing those Orders prove ineffectual, he endeavour'd to sweep them off the Field with all manner of Precipitation.

The Pannel march'd on with the Men to the Guard-house, and, as he thinks, with Coolness and Deliberation, pass'g by the King's Troops in the *Lawn-market* ; a thing generally esteem'd somewhat inconsistent with Guilt, especially such horrible Guilt as he is charged with. Upon his Arrival at the Guard-house, he drew up his Men there, sending a Serjeant to the Provost for Orders ; which were brought, that they should wait
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on their Arms till the King's Troops past; and some of the Men, in waiting, offering and attempting to clean their Guns, but the Pannel discharged it, and would not allow it to be done. Mean time, a certain Person of Credit came up to the Pannel, and asked, If he had fired? To whom he made Answer, He had not. But the Person not being satisfied with the Answer, put his Finger into the Muzzle of the Pannel's Piece; and after having rubb'd it about, and after having also view'd the Lock, said to the Pannel, I see you have not fired; and I am glad of it.

The King's Troops having passed the Guard, the Pannel filed off the Men into the Guard, and ordered the Serjeants to keep them close till further Orders; and by all means not to suffer them to clean their Pieces: And at the same time the Pannel delivered his Carabine, loaded as aforesaid, at the Guard-door, to one of the Guard, neither entering the Guard himself, nor any other House, but went immediately to the Provost. Thus his own Piece was brought back loaded, and apparently without having been fired; and the other two Cartridges which he had got at the Guard, were found upon his Return in his Cartridge-box.

When the Pannel went up to the Provost, some Person there present alledged, he had seen the Pannel fire; which he contradicted, and begg'd the Provost to send for his Piece, which he told he had delivered at the Guard, as aforesaid; and that it would appear, from inspecting of her, that she had not been fired: And the Piece being accordingly sent for, and brought up to the Council-Chamber, and, after being strictly inspected, it was agreed by all present, that she had not been fired: And in this Condition she still lies, loaded, in the Custody of the Magistrates, along with the Cartridge,

Cartridge-box, containing the two Cartridges, as
aforesaid.

Tho' the Pannel has a pretty important Prize at Stake, yet he rests in full Security, that he will prove to the Conviction of the Court every Article above-recited, and a good deal more, in his behalf, to be hereafter mentioned. And if it should here be made Matter of Wonder, how such different Accounts as are given of this Matter can consist together, seeing Numbers of People are impress'd with the Guilt of the Pannel; and that even good, well-meaning People, who were present upon the Spot, persist in affirming, That the Pannel was guilty, by both firing himself, and giving repeated Orders to fire: The Pannel can give no other Account of this Matter than in this way. A miserable Slaughter was, some how or other, committed within the Town. The Guilt must be laid to some body's door; and whether any Art might be used to lay the heavy Load upon the Pannel, in order to draw the Attention of the Multitude from another Point in view, the Pannel shall not say; but intreats the Honourable Court, and every candid Reader, who may happen to take up this Information, to look into the *Caledonian Mercuries*, of the 15th and 10th of April last, Papers supposed to be published by Authority, where will be found a most charitable Account of the Matter touching this misfortunate Pannel, who was then lying in close Confinement, without any body being allowed Access to him; and, of consequence, could have no Opportunity of vindicating himself, until once the Prejudices were deep rooted and riveted, so as even to catch the unwary, tho' well-meaning, Part of the People. And these beautiful Relations of this Transaction are adorned with some witty Sarcasms, very proper to this melancholy Occasion, and painted out with ingenious Reflections,

ons, and quaint rhetorical Investives, very suitable to the Authors of those historical Relations.

And indeed the Authors of those Accounts of the Matter, whoever they are, have the Impudence to affirm, and the Wickedness to endeavour to fix it upon the Pannel, as an Instance of Premeditation and Felony fore-thought; that the Pannel had ordered the Detachment of the Guard to load with Ball and Slug-shot, before they marched from the Guard: And this worthy Author affirms, That such Doing was unprecedented, and such as the Pannel would not pretend Orders for; notwithstanding that it is now, with his usual Candor, admitted by his Majesty's Advocate in his Information against the Pannel, and dare not be denied, but that the Pannel had Orders to see the whole Mens Pieces loaded with Bullet and other Shot, and even to fire those Pieces amongst the Mob in case of Exigency.

The Prejudices against the Pannel being once artfully rooted, it was an easy matter to catch the giddy Mob, who are not able to look back and discern the true Springs and Causes of things: For such is the Nature of human Passions, that, if they are once artfully moved, they will be apt to misguide the Understandings even of Persons of Observation; and thus the Speat having once been created against the Pannel, it grew into a Torrent, and flew like a Train of Fire, every one adding Fuel to the Flame, and Sparks originally increase into a mighty Combustion; and so, in like manner, things entirely of themselves innocent, may be multiplied into horrid Cruelties and savage Barbarity.

It might also operate to the Prejudice of the Pannel, that this Scene was acted in a very short space, attended with great Commotion and Confusion. Words and Actions might be misconstrued, where-
of

of more particular Notice shall be taken hereafter, whereby Persons, even of Judgment, might be deceived, and thereby fall into the vulgar Notions. And here it cannot be deemed an useless Digression in the Pannel, to give a Caution to all Gentlemen who may happen to be called in Evidence upon this Trial, (for 'tis feared the Mob are not capable of this Advice) not to affirm things upon Oath, except their Observations have been accompanied with all that Certainty which those Sensations where-with Mankind is endued, can admit of; because any inconsiderate Rashness, to the Prejudice of the Life or Fame of the Pannel, cannot fail, for hereafter, to be attended with very painful Stings of Remorse.

It was observed for the Pannel, as a thing that could not be denied, That upon many former Occasions, he had been singled out, as the fittest Person to maintain the Peace of the City, by quelling of Mobs and Tumults; and that he had never hitherto, during all the many Occasions on which he had been employed, ever discovered any imprudent Rashness or cruel Temper in the Exercise of his Command, but had exposed his Person to very great Danger, rather than involve the City in Blood, or proceed to such Extremities as the Law even would have entirely justified.

It was also observed in behalf of the Pannel, That it was no new thing for the private Men in the City-Guard, who, tho' they are tolerably acquainted with Discipline, yet are not subject to the military Law, to take upon them to fire upon the Multitude, without any Order from their Commander; whereof the following Instances are offered, and which cannot be denied; *to wit,*

That at the Settlement of Mr. *Wotter/poon*, as a Minister in the *West-Church* Parish, a Party of the City-Guard, under the Pannel's Command, did,

one or more of them, in the Rear-Ranks, within the West-Gate of *Edinburgh*, while the Pannel was marching on their Front, face about and fire upon the Mob, without any Order; and by which Fire several were dangerously wounded. And the like happened in a few Years ago, after the Execution of one *Campbell*, when a Detachment of the City-Guard were conducting the Corps of the Person executed, which was delivered over to the Surgeons of *Edinburgh*, by Order of the Magistrates. And the same thing happened a few Years ago, at a Race at *Leith*, where the Party of the Guard was commanded by Captain *Lind*, whereby several Persons were wounded. And another Instance was given, where the same Irregularity happened, within these few Months, at the Execution of *Brown* the Smith, when the Detachment of the City-Guard was commanded by both Captains, *Lind* and *Fergusson*. And indeed, innumerable other Instances might be given of the Rashness of the Men in this Particular, which it is needless to condescend upon, because they are notourly known in the City.

It may also deserve notice, That the private Men of the Guard might be prompted to fire without Orders, partly from Resentment, that *Robertson* before-mentioned had escaped out of their hands; and partly from being encouraged by the general Order they heard was given by the Magistrates to fire, in case of Resistance: For it is now found, That several of them were heard say, before they went out to the Execution of *Wilson*, that now they had got Arms and Ammunition put in their hands, and therefore would not fail to use them, in case they were attack'd, or any Resistance made.

These Observations, 'tis humbly thought, cannot fail to operate in favours of the Pannel, in case the Proof of the Libel shall be attended with any Uncertainty or Dubiety. And altho' the Pannel

is not so weak of Judgment, as to imagine that such Presumptions can prevail against positive and certain Proof; yet he doubts not, that in due time, when the Proof is led, such Observations must have weight with the candid Jury.

One thing more we must observe in general, that as he has been employed, for these many Years past, as the Scourge of the Mob, tho' never once known to proceed to Extremities; yet such Station of his may be the Cause of drawing Resentment from the lower sort of the People against him.

The Pannel has just Reason to ask Forgiveness of the honourable Court, for dwelling so long upon Generals; but, 'tis hoped, from what is above noticed, and that this is the first Occasion he had of vindicating himself from the Aspersions and Prejudice of his Adversaries, he may merit the Pardon of the Court.

And now to proceed to the Particulars in the Indictment: And whereas it sets forth, That the Pannel, conceiving a most wicked and malicious Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects, Inhabitants of the City of *Edinburgb*, had acted the several Matters and Things charged in the Indictment; the Pannel must observe, That the Circumstances of the Case naturally exclude any Supposition of premeditate Malice and Resentment in the Pannel; because 'tis impossible to conceive, that the Pannel should have retain'd any Malice against a Multitude of Persons, of whom he neither had, nor can be supposed to have had, any Acquaintance. And tho' it was admitted, That the Circumstances of the Case do exclude any supposed long premeditated Malice; yet it was urged, That, in Law, every wicked Action does presume Malice, tho' instantaneous to such Wickedness committed.

To

To which it was answered, in behalf of the Pannel, That the Circumstances of the Case, as laid in the Indictment, do even exclude any Presumption of Malice, accompanying the Acts charged in the Indictment; because every Action must be construed in the most favourable Sense: And therefore, the Actions charged against the Pannel, must even be construed to have proceeded from a Principle of Duty in the Pannel, in maintaining the Peace of the Place, and in supporting the Authority of the Laws, and the guarding of that Execution of them which was committed to him by lawful Authority.

In the next place, an Exception was taken to the Indictment, as not having been laid with sufficient Certainty, the Indictment no where expressing the particular Places of that large Street wherein the Guilt is charged to have been committed, whereby the Pannel was precluded from making his Defences with Certainty: For had it been laid in the Indictment at what Places in the Street the particular Persons, affirmed to have been killed and wounded, were so killed or wounded, the Pannel might have had an Opportunity of proving, from the Circumstances of his Situation at the several Periods, that it was impossible that such Wounds could have been received from his hands. And though it may be true, that such part of the Indictment as charges the Pannel's Order to fire, would be of universal Influence, and reached over the whole Circumstances of Guilt charged in the Indictment, yet as actual Execution, made by the Pannel, was charged separate from his Order to fire, such Proof of Innocence, whereof the Pannel pleaded an Opportunity, might have afforded him a Defence against such Part of the Indictment as charges his own Firing and Killing.

To

To this it was answered by his Majesty's Advocate, That the Libel was as particular as the Law required, describing the Street where the Execution was committed ; which is all that the utmost Scrupulosity could expect in this Case ; because minute Circumstances cannot be known to the Prosecutor, or certainly discover'd, but by Proof upon Trial, and that every Circumstance of the Pannel's own Acting must be known to him. And therefore, if from the Position or Situation in which he was at the time of the firing, the Pannel can shew that it was impossible he could have killed the Person whom he is charged to have shot ; by describing and proving those Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe his Situation, which was not known to him ; and that, by the describing of which, perhaps erroneously, the Prosecutor might minister an unjust Occasion to a Criminal to escape Justice.

To which it was replied for the Pannel, That though it is true, that in most Cases the describing the Street where the Guilt was committed, would be a sufficient Description, yet that in the present case, where it was laid in the Indictment, that in a Crowd or Multitude, various Shots were fired by different Hands, and thereby Wounds given, 'tis even necessary to describe the particular Place of the Street where such Wounds were received, in order to form a Judgment from whose hands those Wounds had proceeded. The Pannel might have fired elusory, or in the Air, and the Wounds received may have proceeded from the Shots of others. That though the Pannel knows his own Position and Situation, and can prove them, yet such Proof could not avail him, nor be received by the Court in point of Relevancy, because it would be a simple Negative, which could not be admitted of,

nor would not apply, unless the particular Places of the Street, in which the Wounds are said to have been received, had been described to him, a Situation which the Pannel cannot be supposed to know; whereas the Prosecutor must be supposed to have known it, seeing the same Information that led him to know of the Wounds received, must necessarily, upon Enquiry, have certiorated him at what Places of the Street such Wounds were received; seeing the Matters and Things laid in the Indictment, are charged to have been committed at high Day-light, in presence of Multitudes. And though the Pannel is fully satisfied of the good Disposition of the honourable Prosecutor, to lay a fair and certain Indictment against every Pannel; yet it must be admitted, that all Indictments ought to be laid with all that Accuracy and full Description, that the Nature of the thing can admit of. And as to such part of the Answer for his Majesty's Advocate as saith, that such particular Description of Place, if perhaps erroneously described, might minister an unjust Occasion to the Pannel to escape Justice; 'tis answered, that such erroneous Description of Place, could in no sense affect the Trial; because, though such Description should not be proved, it would not vary the case, provided the Act of Killing, were proved against the Pannel; because such Description of Place is but a Circumstance immaterial to be proven by the Prosecutor; but, for the Reasons above assigned, highly material for the Pannel to know, in order to lay his Defence before the Court.

It was in the next place offered, as a Defence for the Pannel, That the Resistance of the Mob was so great, and the Attack of the City-Guard so violent against them, in beating, bruising, and wounding the Men, as has been above noticed, while they were in the lawful Execution of that Office committed

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ted to them by lawful Authority, that such Resistance and Attack must have justified the Guard in repelling the Violence of the Mob, since such Proceedings in the Guard, were acted in support of the due Execution of the Laws, which the Mob were highly criminal in disturbing. That this Argument as pled for the Pannel, was not only consonant to the Rules of Reason, but agreeable to sundry Judgments and Precedents of the Court; particularly, that in the Year 1692, it appears from the Books of Adjournal, that *James Gordon*, Messenger, at the Execution of a Caption, did, with many others his Assistants, armed with Guns, Swords, and other hostile Weapons, shoot several Shots, whereon by one *Alexander Jack* was killed dead upon the spot, amidst a numerous Croud, which the Alarm of Noise and Tumult had drawn together, and whereof only part can be supposed to have come there with Intention to resist the Messenger; and the said *James Gordon*, and the others his Assistants, being indicted for Murder, the Lords sustained this Defence to him, relevant to elide the Libel simply, viz. *That he, in the Execution of a Caption, having his Blazon displayed, was, by force of Arms, bindred to enter the House of Loanmay, by the Persons within that House; and that they did threaten and menace the Messenger and his Assistants: and that they threatened to raise the Country; and that the Country did, accordingly, rise, and beset and surround the Messenger, either in the House, or without the House; the said Country People being armed with Guns, Swords, and other invasive Weapons.*

Here your Lordships perceive, that the Court justified the Messenger in shooting amongst the Mob, and killing; because the Persons in the House forcibly hindered him from entering, and threatened and menaced him, being armed with invasive Weapons. And the present case is more favourable

ble in behalf of the Pannel, who acted by lawful Authority, as well as *Gordon* in the other Case did, and who was supporting the Execution of the Laws, as well as *Gordon* was; with this Difference upon the side of the Pannel, that he was not only hindred and menaced in the Execution of his Duty, but he and his Guard invaded and assaulted, beat, bruised and wounded, as has been above noticed, and whereof a strong Proof shall be brought; and that the Mob, in the present case, were not only armed with (but, in their Attack upon the Guard, made use of) big Stones of two or three Pound weight, which must be allowed to be very invasive Weapons; and therefore the Pannel subumes, that the Defence offered for him in the present Case, is stronger, and ought rather to be allowed him than that which was sustained to *Gordon*. Only the Pannel must do the Justice to his Majesty's Advocate, as to acknowledge, that this Precedent was not hitherto offered in the Debate; but when the Record is inspected, will be found to stand in the precise Terms as above mentioned.

There was, in the former Debate, a Precedent of the Court offered, as against the Pannel, which the Pannel, with Submission, apprehends makes for him; namely, Captain *Wallace's* Case, some time after the *Revolution*. Captain *Wallace* was indicted, in the 1692, for having refused, in the 1688, to deliver up himself, in obedience to an Order of the President of the Council; and several Privy-Counsellors, whereof two were Officers of State, and the Bailies of *Edinburgh*, having gone down to the *Canongate*, with a Herald and Pursevant, with their Coats of Arms displayed, to put the Order of Privy-Council in Execution; notwithstanding which, Captain *Wallace* would not deliver himself up; but retired, with the Men under his Command, to the *Abbey*, and defended himself, and

and fired upon the Bailiff's Heralds and Purfevants, shot several Persons dead upon the Spot, and wounded a great many others.

The Defence, pled for Captain *Wallace*, was, That the keeping of the *Abbey* was committed to him by Order of the Privy-Council, which he was obliged to maintain so long as the Trust of it was committed to him: That, as to the Order of Privy-Council, to deliver up his Person, it was contrary to an Act of Parliament of *James VI.* whereby any general Warrant, for putting the Person of any Man in Ward, except where such Warrant was signed by four Officers of State, whereof the Chancellor, Treasurer or Secretary of State to be one, which had not been practised in *Wallace's* Case, was prohibited and discharged.

The Lords, after a very learned Debate, did sustain these Defences to Captain *Wallace*, viz. *That on the Sabbath Night, or shortly before, a Rabble did meet in several Places, in great Numbers, and that severals of them did declare to John Paterfon, their Resolution to trouble the Pannel on his Guard, and to pillage the Abbey, relevant to restrict to an arbitrary Punishment.*

Here, your Lordships perceive, that the Court sustain'd a previous Intention only declared, that they would trouble the Pannel and his Guard, and pillage the *Abbey*, sufficient to moderate the Punishment; so tender are the Laws towards any Person committing Hostility in defence of his Guard; and then the Lords sustained the following Defence relevant to elide the Libel altogether, to wit, *That the Rabble did, in a tumultuous manner, come down the Canongate with Swords and Fire-arms, and did beat some of the Pannel's Centinels; and, being desired to stand, they notwithstanding advanced so near, that the Pannel could speak with them; and, after he had desired them to remove,*

or be at their Hazard, they, notwithstanding thereof, still persisted to advance.

The Application, in the present Case, is easy, The Pannel many times exhorted the Mob to stand off, notwithstanding of which they still pressed upon him; he many times advertised them of their Hazard, threatened to fire upon them if they would not keep off; his Centinels were not only beat, but bruised and wounded; all which is offered to be proved.

Another Case was mentioned in the Debate to your Lordships, which strongly supported the Plea of the Pannel; because it was a Judgment of your Lordships pronounced but very lately, after the most solemn Deliberation of the Court, and wherein, the Pannel is informed, the Court was unanimous; and which Judgment seemed to be of that Importance, as to induce the Court to reverse the Proceedings of the High Court of Admiralty, after a solemn Trial by Jury in that Court, a Verdict returned, finding the Libel proven, and the Defence not proven, and a Sentence of Death pronounced by the Judge of the High Court of Admiralty.

The Case before the Admiralty was this; a Corporal and a private Centinel in Colonel *Hamilton's* Regiment were indicted before the Admiral for Murder; for that they had, upon the High Seas, killed *Hugh Fraser* younger of *Belnain*, by stabbing him with a Bayonet in the Breast, and afterwards throwing him into the Sea, whereof he instantly died.

The Defence pled for the Pannels was this, That the Pannels were, by military Order, appointed to attend the Officers of the Customs in seizing of Goods, by Law made seizable, and that the Pannels being in a Boat upon the Seas, along with the Custom-house Officers, in quest of such Goods, the

Person

Person killed did come up with them in another Boat, with others in Company with him, and that *Fraser* the deceas'd, jump'd into the Boat where the Pannels and the Custom-house Officers were, and endeavour'd to take hold of their Arms, which was both a Resistance and an Attack of the Custom-house Officers while in the Execution of their Duty.

Upon the other hand, it was pled against the Pannels, That *Fraser's* jumping into the Boat was with no Intention to make Resistance, but rather to save his own Life from the Thrusts of the Pannels, their Pieces having been aimed at him; that those in the Custom-house Boat could have no just Apprehension of being mastered by *Mr. Fraser*, he having no invasive Weapon about him whatever, and being the only Person who offered to get into the Custom-house Boat, in which there were several Persons well armed.

The Judge of the High Court of Admiralty admitted of the Pannel's Plea in this Manner only, *Sustains the Defence of Self-Defence propon'd by the Pannels, that the killing of the said Hugh Fraser, by them, or either of them, was in the necessary Defence of their Lives, and repelled the whole other Defences proponed for the Pannels.*

The Jury returned their Verdict, finding the Pannels both guilty Art and Part of killing the said *Mr. Fraser*; and finding it not proven, that the killing of *Mr. Fraser* was in the necessary Defence of the Pannels Lives; upon which Verdict returned, the Judge sentenced both the Pannels to be hanged.

The Proceedings of the Court of Admiralty were laid before your Lordships for a Review, which, 'tis believed, is the single Instance, wherein it was ever contended, that the Proceedings of the

the High Court of Admiralty, in Matters criminal, could be reviewed by any other Court.

Notwithstanding of which, your Lordships were pleased to reverse the Sentence of the Judge-Admiral, no doubt, upon supposed Error in his Proceedings; because the Verdict of a Jury, pronounced upon Evidence, cannot be reversed; and in consequence of which Judgment of your Lordships, the Pannels were set at liberty.

Now the Pannel is advised, that such Judgment, in your Lordships, could stand upon no Foundation, other than this, *viz.* That your Lordships had reversed the Judgment of the Admiral as erroneous, in not sustaining this Defence to the Pannels; That they were resisted by Mr. *Frazer* deceased, while they, the Pannels, were in the execution of their Duty.

And as the Degree of Resistance offered by Mr. *Frazer* to the Pannels, was, by the Pannels themselves, maintain'd to have been no higher than what has been set forth to your Lordships, the foresaid unanimous Judgment of your Lordships, pronounced after many solemn Deliberations, does, by consequence, shew, that it was your Lordships unanimous Opinion, that a very small Degree of Resistance of Persons, in the execution of their Duty, will justify the Persons resisted in the Act of killing their Resister.

And if that was the solemn and unanimous Opinion of the Court in a Case so recent, must not such Judgment afford a strong Argument to the Pannel, that he and his Guard were resisted, while in the undoubted Execution of their Duty, in being beat, wounded, and bruised, by an unruly Mob, who, there was good Reason to apprehend, intended to defeat the Execution of the Criminal.

To this last Case, the Pannel met with no other Answer, from his Majesty's Advocate, but this: That the Pannel cannot plead the Benefit of this Case; because he neither does, nor can aver, that the Firing proceeding from him, or his Order, was necessary for securing of the Execution of that Trust that was committed to him. His Majesty's Advocate does admit, That where a Person has, by lawful Authority, Weapons put into his hands, to be employed either in defence of his Life, when attacked, or in support of the Execution of the Laws, or of the Property of the Crown, or Property of the Subject, such Person may use those Weapons, not only when his own Life is so far in danger, that he cannot probably escape without making use of them, but also where there is imminent Danger, that he may, by Violence, be disabled to execute his Trust: But withal, seems to contend, That the Pannel was under none of those Circumstances at the time he committed the Guilt charged upon him in the Indictment; for that the Execution of the Criminal was over before the Scuffle began, or any Resistance was made to the Pannel, and the Guard under his Command: And that being the Case, the Pannel can plead no other Defence, than such as might arise from his being put under the imminent Danger of his Life.

But, with great Submission, these Positions of his Majesty's Advocate are assumed without any Authority; and, as would appear, not only in plain Opposition to the Laws, but to the many Precedents already offered in behalf of the Pannel. For, 'tis hoped, it must be admitted, even by my Lord Advocate himself, and is indeed so admitted by him, that the Pannel was once in the lawful Execution of his Duty, and was obliged, at all hazards, to support the Execution of that Criminal who was committed to his Guard; surely then, the

the Execution of the Pannel's Duty can never be said to have been at an End, until once the Criminal was fully executed to Death, and as such, ordered to be cut down by lawful Authority. Unless it shall be said, that it was the Pannel's Duty, the moment the Convict was hung up, to let him instantaneously be cut down, rescued by the Mob, and brought to Life again, which seems so have been their plain Intention; for it seems to be confessed on all hands, that there was Danger of a Rescue, which seems to have been the Occasion of all this extraordinary *Apparatus*; and for preventing of which, 'tis admitted, that the whole Guard was sent out with their Pieces loaded, and even with Orders to fire at all Ventures, in case of such Rescue. Was it not then a necessary Part of the Pannel's Duty to protect and support the Execution of the Convict, when hanging by the Neck in the Air, until such time as he was cut down by lawful Authority, as supposed fully dead? And 'tis certain, that, in Answer to the Pannel's Message, Orders were brought from the Bailiffs, that he should yet hang a Quarter of an Hour, which surely, it was the Pannel's Duty to see obey'd, and which Orders of the Bailiffs the Mob nevertheless did resist, and cut down the Criminal long before that time was elapsed, and which the Pannel was, in Duty, bound to oppose; and from this Contrast, 'tis offered to be proved, all the Violence in the Mob proceeded. But,

Can it be with any Justice affirmed, but that the Pannel was in the Execution of his Duty, while he and his Guard were standing upon the Spot under Arms? Is not every Person in the Execution of his Duty, while he is either going to, or coming from any lawful Expedition? And therefore it seems impossible to maintain, but that the Pannel, and the Detachment under his Command, were in the

the lawful Execution of their Duty, until they had once returned, and were dispersed and dismissed from Duty, at which time only, they were reduced under a private Capacity.

And even the Protection of the Hangman, who had actually received several Wounds and Contusions, and was in danger of being tore to pieces by the Mob, was a Part of the Pannel's Duty. For tho' he is a Minister of the Law, somewhat odious, yet he is a necessary one for the Society; and lies under a great Necessity of being protected, from his being so obnoxious to the Resentment of the Mob; and, at least, in Humanity, must have such Protection afforded him, as to defend him from having his Brains knock'd out.

How then can it be said, in any sense, that the Pannel was in such Situation, that he could only plead the Benefit of Self-defence? It is a known Rule in Self-defence, that a Person invaded, must retire as far as he can with Safety; but if that is the Case of a City-Guard, (maintained at great Expence) that so soon as they are invaded, they must immediately betake themselves to their Heels, it will be apparent, that they are but kept up for very useless Purposes.

At the same time the Pannel can, with great Candor, aver, That he is far from being of that Disposition of Mind, as to be ready to take the Advantage, which the Law might afford, against an unruly giddy Mob, whereof he has given proof upon many Occasions, as must be allowed him, and whereof even the present Case will be an Instance in his favour, if he meets with Justice from the Evidence: But withal, he must be allowed to observe, That it would be a dangerous Position, that a Guard, kept up for the Maintenance of the Peace of the Capital City of this Part of the Nation, when they are assembled together upon Duty,

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should

should be allowed to plead no higher Privilege, than that of Self-defence in the strictest sense.

And whereas my Lord Advocate seems only to admit, that a Person who has Weapons put in his hands by lawful Authority, for the Defence of the Property of the Crown, or Liberty of the Subject, may only use those Weapons when he is in imminent Danger of having the Execution of his Trust defeated by Violence : If such is the case, the Execution of Duty will become a very ticklish point ; and 'tis apprehended, that few Folk will be fond of it, if they can possibly live without it ; and of consequence, such Doctrine must very much discourage any Persons from offering their Service, either to the Crown or Common-wealth.

And as the supreme executive Power, is by the Constitution vested in his sacred Majesty our Sovereign, therefore my Lord Advocate, who by his Office is of Council for his Majesty in all Causes, will no doubt have due Consideration, how far an Argument is to be pressed against the Pannel, which by plain Consequence must tend to weaken, if not defeat the Execution of the Laws.

One would rather be inclined to think, that where a Person has the Trust of the Execution of the Laws committed to him, the smallest Resistance to this Trustee, as such, is a guilty Aggression, and that every Opposition of such Aggression is lawful Defence ; because no Man must be above the Laws, and the Life of the Laws, in which the Common Good is implied, is of greater Value than the Lives of any One or Number of the Individuals, and so ought to be defended at all Perils.

His Majesty's Advocate, upon this head, in his Information against the Pannel, does assume this Fact, That the Mob, or Multitude assembled at the Execution, were behaving themselves peaceably, and from this seems to draw his Inferences against the

the Pannel, which indeed will run high enough. The Pannel very well knows, that no Order whatever will justify the Person executing that Order, if such Order appears evidently to be unlawful; and yet in cases which appear doubtful, an Order from a Superior will have its own weight, more especially in military Matters, or such other things as resemble them.

But with Submission, this Reasoning upon the Mob's being supposed peaceable and innocent, is intirely out of the case; for, as we are now upon Relevancy, the Facts must be supposed, and then the Argument considered in that view: And as the Pannel does aver, that he and his Guard, while in the Execution of their Duty, did meet with strong Resistance from the Mob, insomuch that many of the Men were greatly hurt and bruised: And if that was the case, it was an unlawful Invasion of Persons to whom the Execution of the Laws were committed, and so might be by them, in support of those Laws, resented to a pretty great length; except it should be maintained, that in the Situation of the Pannel and his Men were posted, they could plead no higher Privilege than that of Self-Defence; which, with great Respect, cannot be maintained, but rather seems to be a Contradiction; because they had not only their own Defence to take care of, but also the Defence of the Peace and Quiet of this City, and of the Execution of the Laws, and that due Obedience was given to them.

In a word, upon this head the Pannel's Argument is not only supported from the nature of the thing, because a Man who fights with the Laws upon his side, fights with great Advantage against those who are fighting against the Laws: And for that Reason, if a Man were to fight a Duel, the Laws would be the best Second. But also 'tis believed, that no Instance can be given in this Country, or in any other of civi-

lized Policy and Government, where a Person, proceeding to what Extremities whatever against Persons who had assailed him while in the due Execution of the Law, ever suffered the Pains libelled.

My Lord Advocate seems to insinuate, as if the reading of the Riot-Act had been a Duty incumbent upon the Pannel, whereby the innocent Part of the Multitude would have had time to have taken care of their own Safety: But then his Lordship will be pleased to consider, that no Person is, by Law, authorized to proclaim the Act, other than a Justice of Peace, Sheriff, Mayor, Bailiff, or other head Officer; and no Person, under any of those Characters, was left with the unfortunate Pannel; but he was abandoned, and left to grapple with Occurrences, in the best manner his own Discretion could suggest to him.

But then, the reading of that Act could not answer the present Exigency; for tho' the reading of that Law may, perhaps, sometimes answer the End for which it was intended, *namely*, the preventing the Demolition of any House or Meeting-House; but if the Pannel, in the present Case, shall be supposed bound to have kept his Hands across, for the space of one Hour after the reading of this Act, then it is certain, that the Mob might have prevented the Execution of Law in far less space. And it is certain, that, by the Act, the Mob is not put in contempt, or exposed to the Penalties of it, until once they continue together one Hour after the reading thereof.

His Majesty's Advocate is also pleased to hint, as if the offering of this Plea, in behalf of the Pannel, founded upon the Resistance of the Mob, was, in some sort, inconsistent with another to be hereafter mentioned for him, *viz.* His Innocence of the Facts. But, no doubt, my Lord very well knows, That, by the Laws of *Scotland*, there is no Inconsistency

sistency in such different Pleas. And this leads to the Consideration of the Exculpation offered for the Pannel, arising from his Innocence of the Guilt, either of the Action, Command or Order, charged against him in the Indictment.

And, in the first place, as to such Part of the Indictment as charges him with either having fired himself, or having given Orders to fire, whereby *Charles Husband* was killed: Tho' it is indeed true, that it is impossible, from the Nature of the thing, for the Pannel to prove an absolute Negative; because, as his Majesty's Advocate very justly argues, If the Charge in the Libel is proven, *to wit*, That the Pannel either did fire, or gave Orders to fire at this time himself, no negative Evidence can prevail against it; yet, as to this Point, the Pannel offers to prove, what the Lawyers call a circumstance Negative, which, in a good measure, resolves into an Affirmative, *viz.* That, at this time, when *Charles Husband* fell, and got the Wounds charged in the Indictment, whereof, 'tis supposed, he died, the Pannel, as has been above-recited, was in the following Situation; that is to say, he was pointing his Piece with his Face towards the *West-Port*, threatening the Mob, *That, if they would not keep off, he would FIRE*; and that immediately, upon this Expression, a private Centinel of the Guard came up from behind him, and discharged his Piece, by which, it will be proven, *Charles Husband* received his Death-Wounds: because it shall be proven, by Persons of undoubted Veracity, that were hard by the Pannel all the time, that they not only observed that he did not fire his own Piece, and gave no Order for firing, joined with this other Circumstance, That no Proof will appear, during the whole Scuffle, that ever the Pannel made use of any Firelock but his own, and that his Piece, when he returned to the Guard, was found loaded, and
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in such Condition, that it was even confessed by the Magistrates themselves, and many others, not to have been fired; with this farther Addition, to exclude that farther Part of the Charge in the Indictment, of the Pannel's having made use, at any time, of any other Piece than his own, *viz.* That he carried his own Piece in his Hand the whole time, except during the space of Prayer above-mentioned, when he gave it to his Serjeant; and it shall also be proved, that there was but one Shot fired at this time, at which *Charles Husband* is supposed to have received his Death-Wounds. And as to the other dropping Shots that are charged in the Indictment to have followed from this first Shot, if, from the Evidence adduced, the Pannel's Proof shall appear to be most pregnant, that he gave no Orders to fire at this time, then he is not chargeable with the Consequence of such Firings.

And this farther Circumstance must strongly operate in favour of the Pannel, *to wit,* that at the time of this supposed Order to fire, the Men were not drawn up in a regular Line or Band, but were either straggling, mixt with the Mob, or in a circular Form, surrounding the Scaffold in the *Grass-market*; which excludes all Possibility of any supposed general Order to fire, unless it be supposed that the Pannel was a Madman, seeing any Compliance with such Order must have led the Men to fire each in his opposite Neighbour's Breast, and a great many into that of the Pannel.

It is not altogether impossible that the Pannel's Expression of the Word *Fire*, might have erroneously induced this Fellow that came from behind his Back (who of himself perhaps was too forward to embrace such Order, had it been given) to discharge his Piece; and if the Person firing was guilty of an Error, or of a Misconstruction of Duty, the Pannel is not chargeable therewith, seeing that a
very

very Person that has the least Knowledge of the Exercise of Arms must know, that he is not to receive an Order to fire from Implication, but from some known certain Rule of Discipline.

And for this Reason it is, that the Pannel takes it to be a very wise Part of the military Institution, to avoid Misconstructions; that no Man receives Orders to fire, especially when he is resting or shouldering his Arms, but upon a precedent Series of Exercise, attended with some Solemnity, to avoid Mistakes, greater or less indeed according to the Nature of the Occasion.

Sometimes indeed, as was observed in the Debate on the side of his Majesty's Advocate, Persons will, very justly, fire upon so short Advertisement as the Tuck of a Drum; but, 'tis believed, that is never practised but during the Noise or Tumult of Battle, when it is supposed that the Voice of verbal Order cannot reach the Men, and then this Tuck of the Drum, or any other Signal of Firing, must be previously advertised to be the Signal of such Action.

Another thing falls also to be noticed here, touching this first Charge in the Indictment, and which may even be taken through the whole, that when two or more Persons are nigh together levelling their Pieces at the same time, it is not easy for the sharpest Eye, especially if at any distance, to determine from what Piece the Fire proceeded; and of this point military Men, best acquainted with the Exercise of Fire-Arms, can give the best Account.

And *lastly*, upon this head, the best Conjecture the Pannel can make, is this, That upon this first Fellow's firing, without either Order or Example from the Pannel his Commander, the other dropping Shots that ensued, proceeded from other rash Fellows of the Guard, who, encouraged by this first

Example, directed and discharged their Pieces against such part of the Mob, as they respectively supposed any Injury or Invasion upon them had proceeded from.

The next material Circumstance charged in the Indictment, is that touching the Pannel's Behaviour at the *West-Bow*, where it is charged, *That he commanded the Men to face about, and fire upon the People; and that at or about the same time, he fired a Musket, or Firelock, that was in his own band, having either reloaded, or caused to be reloaded, his own Piece, or taken another out of the band of one of the Guard; and that upon this second Example and Command of the Pannel's, several others of the Guard, under his Command, did fire, whereby the Persons mentioned in the Indictment, were killed and wounded.*

As to which Part of the Charge, the Pannel offers the following Proof: And, *first*, as to Order, he shall prove, by Multitudes of Persons nigh him at the time, and who were narrowly observing him (and Orders are generally given with an audible Voice) they heard no such Order given, nor heard no Expression of the Pannel, that, by the most remote Consequence, could have been interpreted an Order to fire: And here the Pannel's Memory, upon the most serious Reflection, cannot divine what could have given Occasion to any body's conjecturing, that he gave an Order to fire at this time. And here also the former Observation falls to be noticed touching the Solemnity of an Order for firing.

2do. As to the Action of Firing charged against the Pannel himself, for firing at this time, the Pannel offers to prove the very Centinel, at least that it was a Centinel of the Guard who gave the first Fire at this time, which was the Shot at *Roberison's* Clofs-head. And the Pannel is inform'd, as has been above noticed, That at the time of taking

king the Precognition, an Offer was made to the Magistrates to single out the Fellow, if they would suffer the Guard to be drawn out, who fired that Shot towards *Robertson's* Cloſs-head, by which the two or three People fell. And further, the Pannel offers to prove, upon this Head, not only that this Fellow was the first Person that fired, without any Order from the Pannel circumſtantiated, as is above noticed; but alſo by many Persons of undoubted Credit, that they could not obſerve the Pannel fire, or diſcharge any Piece himſelf, during the whole time that this Firing is ſuppoſed to have continued: And here the Pannel could evidently caſt up many Inconſiſtencies to your Lordſhips, that muſt neceſſarily be implied, and many Preſumptions that ſtrongly exclude any ſuppoſed Order or Example of the Pannel at this time; but does not think it altogether ſo prudent to mention them at preſent.

As to the taking the Piece out of another Man's Hand, and firing of it, ſuch Action was a remarkable Occurrence, and muſt have fallen out under Obſervation; and ſo the Pannel can ſay nothing about it, but leave it to Evidence, with this only Obſervation, That, as it was a notable Event, it will operate almoſt as ſtrong in the Negative as in the Poſitive. And it muſt be left to the Jury to ballance the Evidence, if a Contrariety ſhall appear, and to lean to that Side, attended with the greateſt Credibility, taking the known Rule of Law into the Compaſs, namely, Favour to the Pannel in caſe of Dubiety. Only this Obſervation falls to be made to your Lordſhips, that the Circumſtances of the Caſe call aloud for the Pannel's being allowed a Proof upon this Part of the Indictment.

The Pannel does agree with his Maſteſty's Advocate, that no negative Evidence can take away poſitive Proof; but the Pannel humbly thinks he

has offered a pretty circumstance one : And as my Lord Advocate seems to admit the Necessity of a Proof on both Sides, so the Pannel will not labour that Point with your Lordships ; not doubting, but you will allow him, in general, to prove what he can to exculpate him from the Guilt laid in the Indictment : and that your Lordships, by your Interlocutor, will allow him as much Scope in that Particular as any Precedent of your Lordships Court can authorize : And there are several Instances, and one very particular one, wherein great Latitude was allowed, both as to the Circumstances precedent, concomitant, and even subsequent to the Acts charged in the Indictment.

Some general useful Reflections might be made ; but this Paper is already drawn out into too great Length, and as the Pannel has learned Judges, and a discerning and candid Jury, the less needs be said ; because, 'tis supposed, they will naturally occur to those interested in the Trial ; and, no doubt, such will lay aside all Prejudices and Possessions, and will never once think of, but utterly despise the Consequences of popular Rage, or vulgar Clamour.

If the Pannel is guilty of the Charge in the precise Way and Manner it is laid against him in the Indictment, he is of Opinion himself, he deserves to suffer ; but if, upon the other hand, it shall come out, that he is entirely innocent of the Blood of those Men wherewith he is charged, he thinks his Case deserves singular Commiseration ; because, if Bonds and Imprisonment, Loss of Employment and Bread, Obloquy, and Reproach of Blood-guilt and Massacre, and of consequence Loss of Character, be Calamities in human Life, then has he had as great a Share of them as ever attended Innocence.

WE are assured, That after the Depositions against and for Capt. *Porteous*, (which are already published for *T. Cooper*, in the Trial) that the Council for him urged, in the Presence of the Court and Jury, That two of the City Magistrates of the City of *Edinburgh*, and a Gentleman, one of the Council against him, which three Persons were present in Court, might be examined to give some Satisfaction to the Court and Jury of the Condition his Piece, or Firelock, was in immediately upon his Return from the Execution of *Wilson*, and before he had entered any House: And the said three Persons being so examined, did all severally declare, in Presence of the Court and Jury, That, upon his Return from the Execution aforesaid, he did directly come up to the Magistrates of the City, assembled at their Council-house, and desired, that his Piece, or Firelock, might be inspected; and that the same having been accordingly inspected by the said Magistrates, assembled as aforesaid, it was found loaded, and in such Condition of Cleanness, that it was apparent, it could not have been in that Condition of Cleanness, had it been fired, unless it had been thereafter cleaned. But these Declarations don't enter the Record.





T O

Her Most Excellent MAJESTY,

QUEEN CAROLINE,

GUARDIAN of these REALMS;

The most humble PETITION of
JOHN PORTEOUS, late Captain-
Lieutenant of the City-Guard of *Edinburgh*; now under Sentence of
Death;

SHEWETH,

THAT a certain Person named *Andrew Wilson*, being convicted in the High Court of Justiciary of *Scotland*, for a Robbery of the Publick Money, committed on the High-Way, was sentenced to death for that Offence; and it being apprehended, the Populace would rescue the said Offender, or commit some Outrage at his Execution, your Petitioner was appointed by the Magistrates of the said City, to attend such Execution with a Detachment of the City-Guard, with Orders to see the same duly executed, and to suppress any Tumults that might happen upon that Occasion:
And,

And, for that end, the said Detachment had Powder and Ball delivered to them out of the City-Magazine.

That, while the said Offender was hanging upon the Gibbet, the Populace began to insist to have his Body cut down, before the Magistrates had given Orders for that purpose; and your Petitioner having no Authority to consent thereto, without such Orders, they threatened to cut him down by Force; and, in order so to do, crowded in great Numbers upon your Petitioner and his Men, and did actually assault them with large Stones, by which several of the Detachment were hurt and wounded.

That, during this Tumult, divers of the said Detachment, without Order from your Petitioner, unfortunately fired upon the Multitude, whereby several Persons were killed, and others wounded.

That your Petitioner, after having used his utmost Endeavours to restrain such Firing by his Men, perceiving them to run into Confusion, and to act without Orders, drew them off as fast as possible to the Guard; and committed such as he suspected to have fired, to the Custody of the Guard, together with their Pieces, which he ordered to be kept for Inspection, in the same Condition as they were then in.

That your Petitioner being accused of having himself fired upon the Multitude on this Occasion, and also of having ordered the Detachment to fire, without any just or reasonable Cause, your Petitioner was put upon his Trial in the High Court of Justiciary aforesaid, for the said supposed Offence, and the Jury empannell'd to try your Petitioner, by their Verdict, found, *That it was proved, that your Petitioner had fired a Gun, and also had given Orders to the Detachment and Guard under his Command, to fire upon the Multitude so assembled; from*

from which firing, either of your Petitioner, or of the Detachment of Guard under his Command, by his Order, the several Persons specified in the Indictment against him, were respectively killed and wounded. And also found it proved, That the Mob assembled at the Execution aforesaid, did invade and attack your Petitioner, and the Detachment of Guard under his Command, with Stones, of a considerable Bigness, whereby several of the Men of the Guard were bruised and wounded.

Upon which Verdict returned by the Jury, the Court decerned and adjudged your Petitioner to be hanged upon a Gibbet, upon the Eighth Day of September next.

That tho' your Petitioner is sensible of that Defence and Respect that's due to the Verdict of a British Jury, yet he humbly begs leave to represent to your most excellent Majesty, the following Circumstances as they appeared upon his Trial; *to wit*, That the Evidence against your Petitioner, as to his having fired, or given Orders to fire, was very contradictory and inconsistent; for tho' some of the Witnesses deposed, that your Petitioner fired the first Shot, yet they differed extremely as to your Petitioner's Situation, at the time he is alleged to have so fired, as well as in other Circumstances; some placing him at one Corner, and others at a quite opposite Corner of the Scaffold: Some alleging, that none of the Soldiers were then near your Petitioner, and that no other Shots were fired at that time; while others describe your Petitioner as encompassed with Soldiers, and say, that several Shots were fired instantly upon your Petitioner's firing, such first Shot; and some agree, that the first Shot was not fired by your Petitioner, but by a Centinel of the Guard, who was close by your Petitioner.

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Whereas, a great many Persons, of undoubted Credit and Veracity, produced on the Part of your Petitioner, expressly swore, That, during the whole time of the Firing, (which continued about four or five Minutes) they took exact Notice of your Petitioner's Behaviour and Conduct, and could not observe that he fired at all ; but that, upon the Mob's pressing severely upon your Petitioner and his Men, and pelting them with large Stones, your Petitioner called aloud to keep off, otherwise he would fire ; and that, upon your Petitioner's pointing his Piece, in order to intimidate the Mob, a Centinel of the Guard, (unknown to the Witnesses) advanced from behind your Petitioner, and fired the first Shot, upon which one of the Multitude fell to the ground : From which Example, they supposed, several others fired ; by means whereof, the several Persons in the Indictment mentioned, were either killed or wounded.

And as a farther Circumstance, to shew that your Petitioner did not fire, it was proved, that upon his Return from the Execution, your Petitioner went directly of his own Accord to the Magistrates, who examined his Piece, and found the same loaded, and in such condition, that they agreed and were satisfied, it had not been fired ; and the Sergeant of the Detachment attested, that your Petitioner having delivered his Piece to the Deponent to keep, while your Petitioner attended the Devotions at the Execution, the Deponent restored the same again to your Petitioner, just before your Petitioner descended from the Scaffold, which is a strong Circumstance to shew that your Petitioner must have fired his own Piece, if he had fired at all.

Your Petitioner also begs leave humbly to observe, that when a Band of armed Men are together, and some of them fire, it is very difficult, especially

specially for those at a distance, to discriminate the Persons that actually fired; and your Petitioner is in Charity led to believe, that the Circumstance of your Petitioner's levelling his Piece, and threatening to fire, attended with that of the Centinel's having fired just behind your Petitioner, may have induced some unwary Persons, in the heat of popular Fury and Resentment, to be too positive in the Assertion of Facts, in their nature dubious and uncertain.

And as to your Petitioner's having given Orders to the Men to fire, though two or three Persons gave Evidence against your Petitioner as to that Fact, yet neither did they agree touching the Place where your Petitioner was standing, nor in the Form of Words pretended to be used by your Petitioner in the giving thereof. Whereas it was depicted by a great number, particularly of the Soldiers, who were close by your Petitioner during the whole time of the Fray, that they could not observe that your Petitioner gave any such Orders; but on the contrary, that he called aloud to the Men, *Don't fire*, and that he push'd back the Man that fired the first Shot into his Rank, (which shews that your Petitioner did not approve thereof;) that he drew off the Men as fast as he could; and that being pursued and pelted by the Populace, divers in the Rear turned about and fired, when your Petitioner was at such distance, that he could not possibly be privy or consenting thereto.

It was likewise observed at the Trial, and not contradicted, That upon many former Occasions of Tumults, when your Petitioner with the Guard hath been ordered to quell the same, your Petitioner had bore great Insults from the Populace, even to the danger of his Life, without firing; or ordering his Men to fire, and that in Cases where he would have

have been well justified by the Law in doing either.

So that upon the whole, as your Petitioner hath the inward Satisfaction of being conscious to himself of his Innocence of the Facts charged against him, so he humbly apprehends, that the Evidence adduced to prove the same, when compared with your Petitioner's Defence, will not appear to be certain or conclusive.

But in case your Petitioner had been guilty either of firing, or ordering his Men to fire, upon the Occasion aforesaid, your Petitioner most humbly intreats your Majesty to consider, that your Petitioner was in the Exercise of a Trust delegated to him by the lawful civil Authority; that he and his Detachment were first unlawfully assaulted and invaded by the Populace, and divers of his Men bruised and hurt; and if, in the Case of such an Insult upon the Laws, your Petitioner had proceeded to repel Force by Force, your Petitioner humbly begs leave to observe, That tho' he shou'd look back with the utmost Sorrow upon so fatal an Event, yet he humbly hopes, that the Provocation and Aggression aforesaid, wou'd be considered by your most excellent Majesty, in your profound Wisdom, as a great Extenuation of an Offence, which could not be supposed to be attended with any prepense Malice of your Petitioner, against Persons of whom he had no Knowledge; and that your Petitioner would be deemed a proper Object of the Royal Clemency.

Your Petitioner therefore most humbly prays

*Your most excellent Majesty, to take
your Petitioner's unfortunate Case into
Your Royal Consideration; and to extend that Mercy and Compassion to your
Petitioner, by which your Majesty, adorned*

adorned with all Excellent and Princely
 Qualities, is so remarkably distinguish-
 ed; and that Your Majesty will be
 graciously pleased to issue Your Royal
 Warrant for your Petitioner's Pardon.
 And your Petitioner, whose Duty hath
 hitherto rendered him, on all Occasions,
 most zealously attached to His Majesty,
 and Our happy Constitution, will, from
 the additional Bond of the most power-
 ful Gratitude, devote that Life to the
 Service of His most excellent Majesty,
 and His Illustrious House, which he
 shall enjoy as the Fruit of Your Ma-
 jesty's Clemency and Grace.



Great



Great Application having been made to Her Majesty for changing the Sentence pass'd on Capt. *Porteous* from Death to Transportation, there was a Reprieve granted for six Weeks, which arrived at *Edinburgh* on *Thursday* before the Execution was to have been, which was appointed for the 8th of *September*. The News of which being known amongst the People, occasioned a Riot, of which our Correspondent gives us the following Account,

From *Edinburgh*, Sept. 12, 1736.

WHILE hear, That a very extraordinary Tumult and Execution happened there last *Tuesday* the 7th Current. About 10 at Night, some Men, by Surprise, entered the City, seized all the Fire-arms, Battle-axes, and the Drums belonging to the City-Guard. The Mob in a few Minutes lock'd and secur'd all the City Gates, and with Drums beat an Alarm, then attempted to force open with Hammers and other Instruments the Prison-Door; but these failing, they set fire to it, and burnt it. When they entered the Prison, they called upon the Under-Keeper who was within, and made him open the double Locks of the Apartment where Capt. *Porteous* was; it had also a Bolt within, but was not bolted, so they had ready Access. He beg'd they would spare him till next Afternoon; but they refus'd his Request, and immediately hurried him away, which was about 11 o'Clock. When brought out of Prison, he was heard to cry. They then marched out with lighted Torches before them: In their way to the *Grass-market*, passing by a Bar-

ber's Sign-post, some called out to hang him up there; but it was resolved to hang him where the Murder was committed: so they proceeded to the Place that the Gallows used to be fixed for Executions, where he was about a quarter of an Hour, till they opened a Shop and brought out a Rope, one End of which they threw over a Sign-post, about 20 Feet high, belonging to a Dyer in the High-street, near the ordinary Place of Execution. He desired some Time to prepare for Death; but was answered, They would allow him no more than those who were shot. They then pulled him up in the Dress in which they found him, viz. a Night-Gown and Cap. He having his Hands loosed, fixed them 'twixt his Neck and the Rope, whereupon one with a Battle-ax struck towards his Hands. They then let him down, and having on two Shirts, they wrap'd one of them about his Face, and tied his Arms with his Night-Gown; then pulled him up again, where he hung next Morning till Day-light. When he was cut down, and carried to the *Grey-friers* Church, upon inspecting his Body, it appeared his left Shoulder was wounded, his Back discoloured, and his Neck broke.

It was observ'd, that this Mob was under a stricter Concert and better conducted than usual; for as marching along to the Execution, *Porteous* observing a Gentleman of his Acquaintance, he gave him a Purse of 23 Guineas, which he desir'd might be delivered to his Brother. They left the Prison-doors open, and Liberty to the Prisoners to make their Escape; and after the Execution was over, they left the Arms and Drums on the Place of Execution, where they were found the next Morning. During the Tumult, Parties of armed Men, with Drums, patroled in the different Streets, to prevent any Surprize from the King's Forces, quarter'd in the Suburbs. After the Execution was over,

over, they went to the Lord Provost's House, and sold him, they were satisfied, and so dismiss'd, without offering any other Violence.

There is one Circumstance mentioned by some, That in order to supply the want of Clergymen, they order'd two of the gravest of their Number to exhort him, as he went to the Place of Execution.

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